PAPERS

RESPECTING

CLAIM OF SHAREHOLDERS

IN THE

LATE WELLAND CANAL COMPANY,

FOR

ARREARS OF INTEREST,

Under the Act 7th Victoria, Chapter 31.

Printed by Order of the Legislative Assembly.

QUEBEC:
PRINTED BY ROLLO CAMPBELL,
NO. 11, GARDEN STREET.

1853.

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CLAIM OF SHAREHOLDERS

TO THE

LATE WELLAND CANAL COMPANY

AND

INCREASE OF INTEREST

Under the Act 12 Victoria, Chapter 73

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RETURN.

To an Address from the Legislative Assembly to His Excellency the Governor General, dated the 13th instant, praying that His Excellency would be pleased to cause to be laid before the House, "a Return of all "Documents and Correspondence relative to any applications on the "part of the Shareholders in the late Welland Canal Company, for "claims alleged to be due them under the provisions of the Act 7 Vic. "cap. 34."

By Command.

A. N. MORIN,
Secretary.

PROVINCIAL SECRETARY'S OFFICE,
Quebec, 14th June, 1853.

SCHEDULE.

NUMBER AND TITLE.	DATE.	SUBJECT.	Page.
1.—Memorial of the Hon. W. H. Merritt, to His Excellency Lord Elgin, on behalf of the Shareholders of the late Welland Canal Company.....	Quebec, March 5, 1853	Submitting for consideration of Government the following Papers: Nos. 2 to 10, together with a brief narrative of the origin, incorporation and proceedings of the Company, in elucidation and support of their present Claim on Government for further indemnification under the sixth Clause of the Act 7 Vic. cap. 34.....	1
2.—Memorial of the American Shareholders in the Welland Canal Company, to His Excellency Lord Elgin	New York, August 1, 1852..	In support of the Shareholders' Claims, and praying for the issue of Debentures for the amount stated to be due; or, that the question may be submitted to the Legislature at the coming Session.....	12
3.—Letter from Hon. W. H. Merritt to the Hon. A. N. Morin, Provincial Secretary	Quebec, January 26, 1852...	Soliciting the issue of Debentures to the Private Shareholders, for the full discharge of their Claims, under the sixth Clause of the Act of 1843, the period indicated therein for such a settlement having arrived	16
4.—Hon. A. N. Morin to Hon. W. H. Merritt	Secretary's Office, Quebec, February 16, 1852	In reply to foregoing; stating that back Interest, up to 1st January, 1843, is now payable, but that His Excellency is advised not to allow it beyond that date	16
5.—Hon. W. H. Merritt to Hon. A. N. Morin.....	Quebec, February 20, 1852	Vindicating the Claim of the Shareholders to Interest upon the sum admitted to be due for arrears of Interest, in 1843, up to the period of actual settlement, and soliciting a reference of the question to the decision of the ensuing Legislature	17
6.—Hon. A. N. Morin to Hon. W. H. Merritt.....	Secretary's Office, February 25, 1852	Asking for Evidence in support of the Claim of the Shareholders; and stating that Government will not object to the production of Papers thereon, if applied for by Parliament.....	18

applied for by Parliament			18
7.—Hon. W. H. Merritt to the Attorney General for Canada West	Quebec, July 5, 1852	Referring to the wording of the Act of 1843 as containing sufficient evidence in support of the present Claim	18
8.—Hon. W. H. Merritt to Hon. A. N. Morin	Quebec, September 14, 1852	Transmitting Memorial of Bosanquet, Franks & Co., of London, with Letter and Opinion of Attorney General, and of H. J. Bushby, Esquire, on behalf of the Claim; and reiterating certain facts in support of its legality	19
9.—Letter of Bosanquet, Franks & Co., Agents for the English Shareholders in the Welland Canal Company, to the Hon. George Moffatt, Montreal, with Memorial and Opinion	London, August 27, 1852	Enclosing Memorial of the English Shareholders in the Welland Canal Company, [and Opinion of the Attorney General, Sir F. Thesiger, and Mr. H. J. Bushby,—for which see No. 10, Letter H.] urging the right of the Shareholders to the arrears now claimed, upon an equitable and liberal construction of the Act of 1843	20
10.—Hon. W. H. Merritt to Hon. A. N. Morin	Quebec, March 10, 1853	Submitting Printed Papers, Legal Opinions, &c., (hereinafter described); and soliciting a reference of the question to a Legal Tribunal in Canada, or England, accompanied by the documents now enclosed, and with a Case to be prepared by the Provincial Attorneys General, on behalf of Government	22
A.	March 5, 1853	Case prepared by Mr. Merritt, and which he submits as suitable to be referred to a stranger for decision on the question at issue between the Government and the Shareholders	23
B.	Dated 14th March, 1845, and 26th February, 1851	Copy of Certificates issued by the Provincial Government for the payment of Interest on Stock held in the Welland Canal Company, as issued prior to 24th June, 1845; and as subsequently issued, with an interlineation, on and after that date	26
		OPINIONS OF EMINENT LAWYERS UPON THE PROPER CONSTRUCTION OF THE ACT 7 VIC. CAP. 34.	
C.	New York, November 22, 1851	Of Judge Mason, of the State of New York	27
D.	New York, November 25, 1851	Of Samuel Sherwood, Esquire	29
E.	Montreal, January 20, 1852	Of Mr. Justice Gale, of Lower Canada	30
F.	New York, October, 1852	Of Marshall S. Bidwell, Esquire	31

SCHEDULE.—(*Continued.*)

NUMBER AND TITLE.	DATE.	SUBJECT.	Page.
G.		Case submitted (by Bosanquet, Franks & Co., on behalf of the English Shareholders) for the opinion of the Law Officers of the Crown in England.. .	33
H.	London, August 24, 1852 ..	Opinion of Sir F. Thesiger, (then) Attorney General of England, and of H. J. Bushby, Esquire	34
I.	London, October 15, 1852..	Of Sir Fitzroy Kelly, (then) Solicitor General of England, and of H. J. Bushby, Esquire; with letter from Bosanquet, Franks & Co., transmitting the same	34
J.	London, November 5, 1852.	Of Sir Alexander Cockburn, present Attorney General of England, and of H. J. Bushby, Esquire, with letter from Bosanquet, Franks & Co., transmitting the same; together with a statement of the Case on which the Opinions of the English Crown Officers were obtained, (for which, see *supra*, Letter G.)	35
K.		Of the Honorable Henry John Boulton, (First Opinion)	35
	Toronto, June 27, 1852....	do do (Second Opinion)	37
11.—Hon. W. H. Merritt to Hon. A. N. Morin	Quebec, April 23, 1853	Enquiring whether the Government are willing to refer the question at issue to the decision of some disinterested Legal Tribunal in Canada; and requesting leave to withdraw the Memorial and other Papers previously sent, in which the Claims of the Company were urged upon equitable considerations, in order to rest their Case upon the construction of the Statute....	38
12.—Hon. W. H. Merritt to Hon. W. B. Richards, Attorney General for Canada West	Quebec, May 5, 1853.....	Representing that the most fitting Tribunal for the final adjudication of this matter is the Judicial Committee of the Privy Council, under the Act 3 & 4 Will. IV., cap. 41., citing precedents in proof of the competency of said Court to decide upon the question at issue between the Government and the Shareholders, and praying that the Provincial Executive (if still opposed to the Claims of the Shareholders,) will sanction a reference of the case to a competent Legal Tribunal in Canada, or to the Judicial Committee of the Privy Council in England	39
13.—Hon. W. H. Merritt to the Provincial Secretary	Quebec, June 6, 1853	Requesting a reply to the above mentioned application, and stating that if it be acceded to by the Provincial Government he will leave the presentation and management of the Petition to the Queen in the hands of the English Shareholders	42
14.—Hon. A. N. Morin to Hon. W. H. Mer-			

and management of the Petition to the Queen in the hands of the English Shareholders 42

14.—Hon. A. N. Morin to Hon. W. H. Merritt ..... Secretary's Office, June 9, 1853 ..... Stating that the application referred to in the previous letter is still under consideration 42

15.—Memorandum by the Hon. W. B. Richards, Attorney General for Canada West ..... Quebec, June —, 1853 .... In answer to Mr. Merritt's application to Government on behalf of the late Private Shareholders, investigating into the facts and merits of the case, with a view to shew that at no time, heretofore, did the Private Shareholders expect, ask or stipulate for the claims they now prefer, and that neither in law or equity are they entitled to them. Also, submitting that there is nothing in the nature of the claim to justify a departure from the ordinary rules, in permitting a reference of the question to a Legal Tribunal, either in this Country or in England 43

A. ..... May 6 & 9, 1839..... Welland Canal Act of 1839; as introduced into the Assembly and ultimately passed. (See also, *infra*, K.) 49

B. ..... September 21, 1842 .... Memorandum, drawn up by Mr. Secretary Rawson, for the information of the Provincial Government, in reference to Mr. Merritt's Application on behalf of the private Shareholders 50

C. ..... December 12, 1836..... Evidence of W. H. Merritt, Esquire, before a Select Committee of the House of Assembly of Upper Canada 53

D. ..... St. Catharines, September 1, 1842..... Letter from Mr. Merritt to Mr. Secretary Rawson, stating amount demanded by the Shareholders in full acquittance of their claim and interest in the Canal 56

E. ..... Toronto, May 22, 1843 .... Letter from Mr. Merritt to the Clerk of the Executive Council respecting an omission in the Minute of Council, of 20th May, 1843, in reference to the claims of the Shareholders. (See *infra*, I.) 56

F. ..... St. Catharines, September 22, 1843 ..... Letter from Mr. Merritt to the Provincial Secretary, enclosing a Memorial from the Shareholders acceding to the terms proposed in the Minute of Council above mentioned 57

G. .... Draft of an Act, in Mr. Merritt's hand-writing, for amending the Act of 1841 .. 58

H. ..... Kingston, July 9, 1842 .... Despatch from His Excellency Sir Charles Bagot, Governor General, to the Colonial Secretary, Lord Stanley, in reference to the claim of the Shareholders in the Welland Canal Company to be indemnified on account of the recent proceedings of the Legislature and Government in regard to that Work 59

I. ..... May 20, 1843 ..... Minute of Council, above referred to 62

SCHEDULE.—(*Continued.*)

NUMBER AND TITLE.	DATE.	SUBJECT.	Page.
J.	November 20, 1843	Extract from Journals of the Legislative Assembly of Canada, of Resolutions upon which the Act of 1843 was introduced	63
K.	Passed in 1839; Received the Royal Assent in 1841	Statute 4 & 5 Vic. cap. 48, "to authorize the Stock held by Private Parties in the Welland Canal to be purchased on behalf of the Province"	64
L.	December 9, 1843	Statute 7 Vic. cap. 34, "to repeal a certain Act therein mentioned, and to make further Provision for enabling the Provincial Government to purchase the Stock held by private parties in the Welland Canal"	65
16.—Hon. A. N. Morin to Hon. W. H. Merritt, M.P.P.	Secretary's Office, June 13, 1853	Stating, in reference to the various documents submitted in support of the claim of the Shareholders, and the Attorney General's Memorandum of facts and reasons against its being favorably entertained, that His Excellency adheres to his decision, that it cannot (either legally or equitably) be admitted; and informing Mr. Merritt that His Excellency cannot accede to his request for a reference of the question to a legal tribunal	67

No. 1.

To His Excellency the Right Honorable JAMES, Earl of ELGIN and KINCARDINE, K.T., Governor General of British North America, and Captain General and Governor in Chief in and over the Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c. &c. &c.

The Memorial of the Honorable William Hamilton Merritt, on behalf of the Shareholders of the Welland Canal Company, most respectfully submits, for the consideration of your Excellency, the following documents:—

First. The Memorial of the Shareholders residing in the United States, with the legal opinions and references thereon.

Second. The Memorial of Messieurs Bosanquet, Franks and Company, Agents on behalf of the Shareholders residing in England, with the legal opinions accompanying the same, and a copy of the Act, enabling the Provincial Government to purchase the Stock, on which those opinions are founded.

Thirdly. In addition to the above, your Memorialist begs leave to submit a brief narrative of the proceedings of that Company, in order that their claim may be clearly understood.

In 1823, an Act was obtained to incorporate the Welland Canal Company, which was organised, the Stock subscribed, the work commenced on the 30th November, 1824, and continued without intermission until the Navigation was opened on the same day in 1829.

In the Report for 1829, (*vide* Appendix to Assembly Journals for 1830, p. 10,) the amount of Expenditure is thus described:—

"In order to show the Government and the Stockholders that their money has "been economically expended, the following statement is presented:—

"Amount paid Contractors on the Estimate of the Engineers.....	£243,000
"Amount of Awards and Real Estate.....	4,853
"Duties to Government and Interest to Bank of Upper Canada.....	8,804
"Thomas Proctor, Agent, New York.....	3,428
"Contingencies, including Salaries, &c., making near 5 per cent. on the outlay	12,710
"Total.....	£272,795"

The extent of the work constructed for the above outlay is also pointed out.

A Ship Canal, from Lake Ontario to the River Welland, sixteen miles, to mouth of said River towing nine and one-fourth miles; to Fort Erie, on the Niagara River, eighteen and three-fourth miles; Port Maitland to Dunville, five miles; Dunville to Cayuga, fifteen miles, and Dunville to the Deep Cut (near Port Robinson) twenty-six miles: embracing, in all, a Navigation of ninety miles in length, with an ascent of 358 feet, surmounted by forty wooden Locks; the erection of two Harbours, Ports Dalhousie and Maitland, an Aqueduct over the River Welland, 365 feet in length (designed and built by Marshall Lewis), and the best wooden structure in America. A Dam and Embankment over the Grand River, near one mile in length, fifteen feet water in the Channel, and one and three-quarter miles of the deepest earth cutting on this Continent. The Directors state, that "notwithstanding the increased expense and delay incurred by moving the Dam from "the entrance at the Grand River, the Slides at the Deep Cut, and the limited "means of the Company, it will scarcely be credited, that this great undertaking

" is so far accomplished for so small a sum. It is quite impossible to realise the " embarrassments of this Company during .e above period, arising from a desire " to introduce capital from the mother country, when they were led to believe it " would be readily obtained."

The origin of those embarrassments is clearly pointed out in the extract of the Report of 1825 :—

" On the day subsequent to the passing of this Act, the Directors assembled, " and, being anxious to preserve the management under British influence, they de- " termined to reserve a considerable part of the increased Stock, in order to be of- " fered, in the first instance, to Subscribers in England. Of the original Stock of " £40,000, more than one half has been subscribed in New York, and there was " little doubt but that the whole Capital required might at once have been obtain- " ed in that opulent and enterprising city; whereas in Canada the want of Capital " precluded any prospect of obtaining subscriptions to so large an amount. Feel- " ing the expediency of immediately obtaining means to proceed with the works " which had already commenced, and at the same time being desirous that at least " a majority of the Stockholders should be British subjects, the Directors resolved " to limit the Subscriptions in New York to £75,000, which sum was immediately " taken up by the old Stockholders, to whom the option was first given; so that at " a public Meeting which had been advertised for opening Books and receiving " Subscriptions, no Subscriptions could be accepted; and such was the general " opinion of the benefit promised by the undertaking, that more than the whole " Capital would, at that meeting, have been readily subscribed, but the President " of the Company (the Honorable John Henry Dunn, then Receiver General for " Upper Canada,) who was present, refused to receive more than the prescribed " amount of £75,000."

As an evidence of the want of Capital in Upper Canada during the progress of this work, only 232 Shares of the Capital Stock, amounting to £2,000, was held in that Province, and only eight individuals were eligible for Directors.

In 1826 and 1827, the Acts 7 Geo. IV., caps. 19 & 20, and 8 Geo. IV., caps. 2 & 17 were passed.

On the thirtieth September Lord Bathurst's Despatch was received, offering to advance one-ninth of the estimated cost of Canal on certain conditions.

In 1827 a grant of 13,400 acres of land was made, and £50,000 Stock subscribed on certain conditions by the Legislature.

In 1828, out of the £100,000 which was reserved for Shareholders in England, about £35,000 was obtained, with a liberal grant of £50,000 sterling from the Imperial Legislature; so that a sufficient sum was procured to prosecute the work with continued vigor until the twenty-fifth October, when the most formidable slips took place at the Deep Cut, at a time when there was every prospect of getting the water from the Welland River through in ten days. This disaster compelled the Company to adopt a higher level from the Grand River, which required the construction of a Dam over the Grand River, an Aqueduct over the Welland, four wooden Locks at the Deep Cut, twenty-seven miles of a Feeder, and a Ship Canal of nearly half a mile in length to connect the Welland and the Niagara Rivers, with the Towing-paths thereon, at a cost of £25,000 over and above the amount of money then at the command of the Company. After due deliberation, on the tenth day of April, 1829, this great undertaking was commenced; on the 9th October, the water was let in from the Grand River, and on the thirtieth November, Five years from the day the first sod was removed near the Deep Cut, two Vessels passed from Lake Ontario to Lake Erie.

This unprecedented result was obtained by combining the personal interest of every individual employed on the work.

The agreement between the Company and the Contractors stipulated that the payments were to be made to each in proportion to the amount of money on hand. Between the Contractors and individuals, to remain on the work until finished, and wages not to be paid until a grant was obtained from the Legislature, or some other source.

The Report contains the following just and appropriate remark:—"Had it not "been for the confidence manifested by the Contractors, the work must have been "suspended altogether: by their indefatigable exertions, under every disadvantage, "in carrying out the plans of the Company, is the unexampled success of this "year's work to be attributed." Also:—"However great have been the difficul- "ties surmounted in constructing so formidable an undertaking to its present ad- "vanced state, the whole pressure has been borne by the Shareholders, since no "aid has been granted by the Government or the Legislature, for which the in- "terest has not been punctually paid up by the Company." "The financial "arrangements have been attended with difficulties, which they had no reason to "expect, because they have arisen from a hesitation to fulfil engagements which "the Directors considered to be conclusive, and upon which they therefore relied. "No such failure, however, has occurred with respect to the Shareholders in "America."

Up to this period, the Directors were appointed by the Shareholders. They never accepted any compensation for their services, and having accomplished the object for which they undertook this most arduous duty, they retired with a consciousness of having opened a commercial intercourse which, although fully appreciated by them, was not by the public, as appears by the following remark in the Report of 1829:—

"It has been their mortification to find, that while with the greatest proportion "of strangers who visit this Province the Welland Canal seems to possess a pecu- "liar interest, the inhabitants of Upper Canada appear to entertain the most im- "perfect ideas of the stupendous nature of this undertaking, the rapid strides by "which it has advanced to its consummation, and the immense advantages to "themselves and to their country which must follow the successful termination of "a work that it is probable will be thought hereafter to reflect some degree of credit "upon those by whose encouragement and exertions it has been supported."

Under the provisions of the Acts 10 Geo. IV. cap. 9, and 7 Will. IV. cap. 92, sec. 8, three of the Directors were appointed by the House of Assembly; or, under last mentioned Act, by the Government.

In 1830, a loan of £25,000 was obtained, to pay off the debt due the Contractors the preceding year.

In 1831 an application was made for a further loan of £200,000 to pay off the debt due the Government and extend the Ship Canal to Gravelly Bay (the circuitous route by the Niagara River having proved tedious and expensive;) only £50,000 was obtained, and that on condition that the Company should furnish individual security that this sum should complete the whole Canals, Harbors, &c., &c., from Lake to Lake, without any further grant for that purpose, and should indemnify the Government against the payment of interest on the said loan, and one-half the principal of the same. Three individuals furnished the security for the stipulated amount. During this period, there was received from all sources £178,724, which was expended in the construction of the Ship Canal referred to, the Harbor at Gravelly Bay, and widening the Feeder from Dunville to the Junction, twenty-two and a half miles in length. See Acts 3 Will. IV. cap. 55, 4 Will. IV. cap. 39, and 5 Will. IV. cap. 24.

In 1834, a very able paper from the late John B. Yates, Esquire, of Chittenango, in the State of New York, (to whom the Country is mainly indebted for

the early construction of this work, he having sustained it by his individual credit and resources on two occasions when it must otherwise have been stopped,) was addressed to James H. Sampson, Chairman of the Committee of the Legislative Assembly, in which he clearly points out that when the Canal was commenced any attempt to construct the Locks of any other material than wood must have caused an entire failure; that no work of similar magnitude was ever constructed for the same money; and that from his knowledge of the extent of the Country by which the Canal is supplied, he has every confidence in its success, provided means are procured to complete it.

The Directors report, in 1833, (vide Report, in Appendix to Journals for 1836, vol. 2, p. 496,) that during this period "There has been no want of "exertion or skill in constructing or economy in executing this arduous undertak- "ing. The increased expenses and tedious delays proceeding from causes not "within their power to control. The changes made in the line of the Canal—its "increased dimensions, and alterations of the original Plan, involved the Company "in great additional expenses. The losses, delays, disappointments, and embarrass- "ments against which the Company have struggled, since the extension of their "charter for ship navigation, and the failure in procuring the stock in England, can "only be known to them to whom its management was entrusted.

"The Stockholders alone, who are the most deeply interested, view the under- "taking in its true light, and are entitled to the consideration of the Country for "the sacrifices they have made, and for the spirited manner in which they have "sustained the work. They have laid out of their capital for many years, and "have incurred a positive loss, while the British Government and the Provinces "of Upper and Lower Canada are positive gainers."

These embarrassments were greatly augmented by dissensions among the Directors, whose appointment had become a party measure, and they were selected from individuals who had always been the most prominent opponents of the undertaking. Notwithstanding the loss of time and continued dissensions which prevailed during a part of the last seven years, public attention was drawn to the importance of the work, the opinions of eminent men were elicited, &c., &c. Benjamin Wright, Esquire, the Principal Engineer on the Erie Canal, after a minute examination of the work, addresses the Hon. William B. Robinson, in October, 1833, as follows:—

"I can hardly find words to express what I think of the importance of this "Canal, and the auxiliary project of improving the Rapids of the St. Lawrence, to "the commercial importance of Montreal and Quebec. All the Western World, "which is to be inhabited by its tens of millions of industrious people, is very much "inclined to get on to Lake Erie, and when once there it will show a great want "of enterprise in the people of the two Canadas, if they do not compete for this "great prize; they can do it, and will do it successfully. The New York Canal "can never accommodate that World, even with all the auxiliary Railroads which "can be made. I may be enthusiastic in my views; I think I am not, and that "Canada ought to be up and doing."

From this time forward the public took a lively interest in the undertaking.

In November of the year 1836, a Committee of the House of Assembly was appointed to examine the affairs of the Welland Canal Company, consisting of Messrs. Jonas Jones, Chairman; Cartwright, Chisholm, Rykert, Bockus, Robinson, Norton, McKay, and Richardson, who report, "That from a personal inspec- "tion of the whole line, they are impressed with the importance of the work. "Considering the obstacles to be surmounted, it has astonished the Committee to "see how much has been accomplished. They recommend making the Welland "Canal strictly a public work, on such terms as will combine the principle of in-

"demnification to the private Shareholders, with due regard to the interest and "convenience of the public." (See Journals, 29th November, 1836.)

The reason assigned was, that the Shareholders had received no equivalent for their outlay, while the public were amply remunerated. In proof of which they remark, "that the Revenue of the Ports of Fort Erie and Chippawa had increased "from £31, when the Canal commenced in 1824, to £1,068 in 1835. That it is "impossible to estimate the value of the erections, and the Land on and above it, "which already has added thousands and thousands of pounds to the value of the "Province, far exceeding the principal and interest of the outlay." (2nd Report, dated 17th December, 1836, in Appendix No. 3 to Journals of 1836-7.

The total cost of the Canal up to this year, consisted of Stock paid by the Government of Upper Canada, 8600 Shares						£107,500	0 0
do	Lower Canada, 2000 Shares					25,000	0 0
Individuals in	Upper Canada, 297 Shares					3,712	10 0
do in	Lower Canada, 1106 Shares					13,825	0 0
do in	New Brunswick, 40 Shares					500	0 0
do in	New York, 5570 Shares					69,625	0 0
do in	England, 2411 Shares					30,137	10 0
Forfeited Stock						540	0 0
						£250,840	0 0
Loaned by the Province from 1826 to 1831				£100,000	0 0		
do do	British Government			55,555	0 0		
						155,555	11 2
						£406,395	11 2
Tolls in 1830 and 1831				£ 3607	14 8¾		
do	1832			2432	9 8¼		
do	1833			3618	1 7¾		
do	1834			3719	1 1½		
do	1835			3807	5 11¾		
do	1836			5059	3 2		
	Total			£22243	16 4		
Land and Hydraulic Rents				554	7 9½		
Exchange				7156	15 5		
Bank of Upper Canada, Loan Account				1370	2 3		
Donation of the Catholic Bishop of Quebec				25	0 0		
George Keefer, J. Davis, S. Smith				2157	4 2		
Balance Sheet for 1836, Land and Hydraulic Rents	£453	4 5					
Interest	102	11 1					
				555	15 6		
Issues of Welland Canal Notes				8115	15 0		
Various other small items				2954	18 7		
						45,123	15 0
Making in all, as per the Balance Sheet submitted by Messrs. Cameron and Murray (*vide* Appendix 3. Journals of 1836-7).						£451,519	6 2

Under the Act 7 Will. IV. cap. 92, all Loans heretofore made to the Company by the Provincial Government were converted into Stock, and a further Sub-

scription on the part of the Government of £245,000 was also authorized, to complete the Canal in a durable manner with stone Locks; three out of the five Directors were appointed by the Government, which virtually placed the Canal under its control. This Act appropriated the income to be derived from the Canal, first, in the payment of interest on future Loans; the remainder in the payment of Dividends to private Shareholders until it reached six per cent., after which the surplus was to be applied to the payment of interest on the previous advances by the Government.

The cost of management to be sustained out of the capital until the Canal was finished.

The publication of the Report of the Directors of the 12th February, 1838, created a distrust in the minds of the Shareholders, respecting the future management of the Canal, which led them for the first time to memorialize the Government. The Memorial states:—"That the Shareholders had subscribed their stock as "early as 1825. In consequence of the capital having been withheld, they were "compelled to pay up the full amount in a very short period, to their great injury, "for which, up to the present moment, they have never received a farthing. That "in 1837, they learned with dismay, that without their knowledge or assent, the "management of their property was taken from them by the Legislature, and "vested under the control of the Government, a measure which, without remuneration, they believe to be unprecedented in any Country."

"That if the true spirit and meaning of the Act had been adhered to, it would "have insured the Government interest on their loan, and the Shareholders a dividend, inasmuch as the expenditure would have been gradual from year to year, "and the income, as on all other Canals, would have increased in a progressive "proportion. They conclude in praying that as the control of their property had "been wrested from them, they may be repaid for their outlay in constructing a "public work which, for usefulness and profit, under proper management, is not "equalled in America." (See Memorial, dated 18th March, 1839, in Appendix to Assembly Journals for 1839-40, Vol. 1, part 2, page 23**.)

The Committee to whom was referred the Message of His Excellency the Governor General on the subject of the Act authorizing the purchase of the private stock held in the Welland Canal Company, and the Petition of the Shareholders, report:—

"That after referring to the various documents from one to ten, among which "is the Report of the Committee of this House in 1836, recommending the purchase of the stock of the Private Shareholders on such terms as would ensure them "principal and interest, Your Committee are of opinion that the 17th Clause of "7th Wm. IV. cap. 92, was intended to be applied wholly in payment of the interest on loans authorized by the Act to indemnify the Provincial Government "from any payment of interest in future, and the remainder to apply as a dividend "to the Private Shareholders. Under this impression, and from a careful examination of all the documents referred to, Your Committee recommend an Address "to the Queen, praying the Royal Assent to the Bill passed last Session; and if "the Royal Assent be withheld thereto, they think it due to the Shareholders that "a Bill should be passed the ensuing Legislature restoring the majority of the "Direction to the Private Shareholders, and placing them in the same position as in "1836, and relieve the Legislature from the imputation of a violation of private "rights and a breach of public faith which the assumption of the control of their "property without the consent of the Private Shareholders will subject them to.

"All of which is respectfully submitted.

"GEO. RYKERT, Chairman."

The above report (*vide* Appendix to Journals of 1839–40, Volume 1, part 2, page 11**) was adopted, and an unanimous Address to the Queen passed to carry out its provisions.

During 1841, the Act 4 & 5 Vic. cap. 48, the first Act authorizing the Government to purchase the Private Shares, and make the Welland Canal wholly a public work, passed the Provincial Legislature.

The following statement is exhibited to show the actual amount of the yearly Revenue derived from the Welland Canal when the first Act passed the Legislature for its purchase, as well as the estimate then made for its future increase. On the 31st January, 1839, the Directors estimated the progressive increase of of Income from the Welland Canal, for:—

1839, at..... £10,000 ..... 1840, at..... £12,500
1841, at..... £15,000 ..... 1842, at..... £18,000

It appears that the actual amounts realized in each of those years were severally £12,823, £20,228, £20,792 and £24,976 (having exceeded the estimates in this short space of time £23,319). The Directors remark:—"That the estimated "progressing increase of Income is founded upon the Receipts of the Erie Canal, "and we can see no good reason why the geographical position of this Canal "should not realize the same result." (See Appendix to Journals of 1839–40, Vol. 1, part 2, p. 19 * *.)

In 1841 the Royal Assent was given to the Act of 1839, and the Legislature authorized a Grant of £500,000 to complete the work, by the Act 4 & 5 Vic. cap. 28. Every Grant heretofore had been closely contested.

In 1834, Mr. Justice McLean, then Speaker of the Legislative Assembly, (and always a prominent supporter of the Welland Canal,) carried the Bill by his casting vote, and without individual security it could not have been passed.

This year, on a division, only two out of eighty Members opposed this comparatively large expenditure. The Government now assumed the entire control, (see Act 7 Vic. cap. 34,) and commenced the enlargement under the superintendence of the Board of Works. The Expenditure, during the last four years, was as follows:—

Amount derived from Tolls, from 1837 to 1840, inclusive.

Tolls of	1837 ...	£5,521	4	4	Hydraulic Rents...	£697	14	10	£6,218	19	2
do	1838 ...	6,723	4	11	do ...	330	12	11	7,053	17	10
do	1839 ...	11,710	9	7	do ...	1,112	2	10	12,822	12	5
do	1840 ...	19,129	12	2	do ...	1,098	6	1	20,227	18	3
									£46,223	7	8

Expenditure under the Act of 1837, 7th Wm. IV. from 1837 to 1840..... £114,467 0 0

Total Expenditure and actual Cost of the Welland Canal to the Company, (as appears by the Official Reports)..... £[illegible],986 0 0

The following Statement gives the Cost of the Welland Canal to the public:—

STATEMENT of the several Amounts Paid to the Welland Canal Company, by the Provincial Government of Upper Canada, under the 7th Wm. IV. cap. 92, in 1837, which converted all Loans into Stock, up to the time of the purchase.

Act 7	Geo. IV.	cap. 20,	in 1826	£25,000	
Act 8	do	do 17,	in 1827	50,000	
Act 11	do	do 11,	in 1830	25,000	
Act 1	Wm. IV.	do 18,	in 1831	50,000	
Act 3	do	do 54,	in 1833	7,500	
Act 4	do	do 39,	in 1834	50,000	
Act 7	do	do 92,	in 1837	68,144	
				£275,644	
Amount Debentures to private Shareholders in 1843				117,800	
Amount for which the Province has issued Debentures to date...					£393,444

From the above it appears that the construction of the Canal, up to 1840, had cost the Company.....£565,986
Although the public pay in 1843 only 393,444

Passing over the period during which the Welland Canal was under the management of the Commissioners of Public Works, it may be well to submit a Statement of the several Legislative Grants from 1841 to 1851:—

Act 4 & 5	Vic.	cap. 28,	in 1841	£500,000	0	0
Act 9	do	do 63,	in 1846	280,000	2	11
Act 10 & 11	do	do 34,	in 1847	50,000	0	0
Act 11	do	do 9,	in 1848	68,155	9	5
From 1849 to 1851, *vide* Public Accounts.....				97,017	0	0
				995,172	12	4
To which add expenditure under different Acts up to 1843.....				393,444	0	0
Makes the total Public Debt				£1,388,616	12	4

The Canal is increased to the following dimensions:—Forty-five feet in the bottom, nine feet six inches deep, with a slope of two to one, leaving a surface of eighty-five feet, but ten feet in depth is provided for in the summit levels. The Locks Numbers one and two, below St. Catherines, those at Port Colborne and Port Maitland, and the one erected this year (1852) at Allanburgh, are 45 feet wide by 200 long between the meters. The remainder from Thorold to St. Catherines are twenty-six and one-half feet by 150. When the dimensions of the principal Locks at Allanburgh are increased to correspond with the Aqueduct, the largest Steamers now navigating the St. Lawrence may approach to within four miles of each other between the two Locks. There are thirty-three Locks in all, with waste wiers on each level. The Aqueduct over the River Welland is 316 feet long, forty-five feet wide, and nineteen feet eight inches in depth, in order to serve either the Grand River or the Lake Erie level. All built of the most durable material and in the best manner.

The following Tables are designed to show the actual amount of Capital expended in each year, as well as the amount of Receipts and Expenditure from 1841 to 1851, under the management of the Board of Works:—

TABLE No. 1.

1. Year.	2. Amount expended each year.	3. Amount of Tolls.			4. Amount on which Interest was payable.	5. Amount of Interest at 4 per cent.*	6. Amount paid to the Share-holders.	7. Interest at 6 per cent.	8. Total Interest.
	£	£	s.	d.	£	£	£	£	£
1841	.....	20792	3	11	.....	.....	.....	.....	.....
1842	84286	24975	11	8	.....	.....	.....	.....	.....
1843	141393	16159	6	0	176219	1393	7235	.....	8628
1844	219979	26134	12	11	393198	7048	7235	.....	14283
1845	158449	19886	10	5	551647	15728	7235	.....	22963
1846	102146	27410	1	6	653792	20000	7235	8098	30333
1847	77233	30549	17	8	731025	20000	7235	9227	36462
1848	76774	29064	7	3	807799	20000	7235	13861	41096
1849	67453	34741	18	8	875251	20000	7235	18468	45703
1850	59225	37925	17	7	934478	20000	7235	22515	49750
1851	32763	51075	1	9	967241	20000	7235	26070	53305
Total.....	975172	318714	17	8	995172	.....	.....	.....	302523

* 4 per cent. is estimated until it reached £500,000; the appropriation under 4th and 5th Vic. being negotiated at that rate of interest, and 6 per cent. on all payments thereafter.

From the above it appears, the Income from Tolls has exceeded the Expenditure for Interest some £16,000.

TABLE No. 2.—(FUTURE PROSPECTS.)

Estimated Income.

	£	s.	d.		£	s.	d.
For 1852.....	58500	0	0	For 1858.....	178180	0	0
For 1853.....	70200	0	0	For 1859.....	209616	0	0
For 1854.....	84240	0	0	For 1860.....	251538	0	0
For 1855.....	101090	0	0				
For 1856.....	121305	0	0				
For 1857.....	145566	0	0	Gross Income for 9 years...	1215235	0	0

Expenditure.

	£	s.	d.
Amount of Provincial Debentures issued in 1843, for the purchase of the Canal.....	393444	0	0
Additional amount for private Shareholders.....	2780	0	0
In 1852—Amount paid on account of Interest.....	107378	0	0
do —Amount still due thereon	65113	0	0
do —Expenditure under Board of Works.....	995172	0	0
Total amount of Capital for which Debentures have and will be issued£	1563882	0	0
The amount of Interest to be paid annually on £500,000 under the Imperial Loan Act of 1841, at 4 per cent.....	20000	0	0
Carried over..... £	20000	0	0

EXPENDITURE.—(*Continued.*)

	£	s.	d.
Brought over.....	20000	0	0
£1,063,882 under Provincial Acts, at 6 per cent.....	63832	0	0
136,118 for future improvements thereon, at same rate of Interest.....	8167	0	0
£1,700,000 Total Capital and Interest thereon.....£	91999	0	0
Annual Management and Repairs	6001	0	0
Total Expenditure.....£	98000	0	0
The average gross Income per year of estimated Income, is	135026	0	0
Leaving an excess, for each year, from 1851 to 1860, of.. £	37026	0	0

The calculations on the future prospects of Income are based on the same principle as the Estimate of 1839, although more clearly defined. The ratio of progress sustained on the Erie Canal for fifteen years prior to 1849, and the Provincial Works of Canada for the five years they have been in operation, is found to average twenty per cent. per annum. (See Report of Commissioners of Public Works, for 1850, in Appendix to Journals of Assembly for 1851, (Letter T.)

In 1851, the Tolls were estimated at £48,750, upon the assumption that one-half of the Western trade between Lake Erie and the Atlantic would be attracted through this Canal. The relative porportion of Trade has not been realised, although the Income has increased from £37,625 in 1850 to £51,146 in 1851, making an increase of £2,396 over the Estimate, and £13,531 over the preceding year.

From this data we may rely with some confidence upon the Estimates for the future keeping pace with the past.

The cost of management and repairs are taken from the Returns of Samuel Keefer, Esquire, Chief Engineer of Public Works. The revenue of this Canal has now reached so large an amount, and has, from year to year, been so steadily increasing, that the Income may be calculated with an approximation to certainty.

The average of nine years is selected because, in 1852, the Tolls reached £45,000, nine years after the purchase in 1843.

An additional Towing Path is about being made between Thorold and St. Catharines.

The Locks are to be lit with Gas, and the Canal deepened throughout to ten feet water.

These improvements perfected, with a never failing supply of water furnished by Lake Erie, will make this Canal stand unrivalled not only for utility and beauty, but it will establish a fountain of wealth, from which a never failing source of revenue will flow for all time to come; for which the public, be it remembered, are wholly indebted to the early enterprise of the private Shareholders.

In conclusion, Your Memorialist begs leave to represent that the preceding narrative has been compiled from Official Records, proving

First. That at the commencement of this undertaking every inducement was held out to Foreigners to become Shareholders.

Second. That serious losses were sustained by those Shareholders residing in the United States in reserving Stock for the English market, then calling in large advances in so short a time, many having paid up the whole of their Stock by the 1st October, 1826. (See Petitions of Shareholders of 1839, and Returns of Inspector General, in 1852, coupled with the Report of 1845.)

Third. That the work was constructed with greater economy and in less time

than any other similar undertaking in America, notwithstanding it was purchased by the public at £172,542 less than its cost. (See *supra*, page 7.)

Fourth. That the Income received from Tolls and increase of Customs Duties, created by its construction, far exceeded the amount of Expenditure, so that the Canal in reality never cost the public a single farthing.

Fifth. That the public have gained an incalculable amount of wealth by the increased value of land and property, by the reduced price of transit since 1829.

Sixth. That the efforts made, the embarrassments, casualties, and hazards incurred, in completing this undertaking, were far greater than any equivalent received.

Seventh. That the first proposal to make the Welland Canal a Public Work, originated with a Committee of the House of Assembly in 1836. The conditions then stipulated were adhered to in the Acts of 1837 and 1841, and more clearly specified in the Act of 1843, which repealed at the same time all former Acts, and deprived the Shareholders of the option of retaining their interest in the Canal under the Act of 1837.

It is obvious the sixth Clause of this Act was intended to carry out the principle laid down by the Committee in 1836, as the one on which the transfer of the Canal to the public should be effected, viz:—"Ultimate indemnification to the Private "Shareholders, with due regard to the interest and convenience of the public," and is in fact the agreement under which the respective parties are bound. Had the Income from the Canal in 1843 reached a sufficient amount to pay the Interest then due, it is clear Debentures would have been issued for the amount; but as it did not, the time was prolonged, until the Revenue from the Canal reached a certain fixed sum. All the Shareholders ask, is that the original agreement may be fully and fairly carried out. In 1843, when the Canal was sold, the Directors received the amount of the original paid up Capital, in full, not indeed, in Cash, but in Debentures. No indemnification was then made for arrears of Interest on the Company's outlay since 1828, but it was conceded that the Company were lawfully entitled to these arrears at that time, and had the Government then paid up this back Interest, the transaction would have been closed; but the Company agreed to wait until means for this payment should be afforded by the Canal itself. In 1852, the Canal Revenues became sufficient to enable the Government to meet these arrears from that source; meanwhile, the Interest had accumulated to form a debt, up to 1843, of about £106,000. Nine years having elapsed before this debt could be liquidated, the Company expected, as a matter of course, that Interest for this period, at the ordinary rates, would have been paid, as well as the Principal. In private transactions of a like nature, it would be clearly understood that Interest becomes due upon money owing from the time the debt or obligation is incurred, and to withhold it would be considered unjust.

This Debt was incurred, and the right of the Shareholders thereto admitted, in 1843; they consented to postpone the receipt of the Money until a certain future day, but then expected to receive the principal sum which had accrued for Interest up to 1843, with lawful Interest thereupon up to the day of final settlement.

The Sxth Clause of the Act of 1843 provides, that the Shareholders should receive an equivalent for this amount, whenever the Tolls from the Canal should justify it, as the Certificate hereunto appended will shew.* This payment has been withheld, contrary to the terms and spirit of the agreement and of the Act itself, consequently the Shareholders have good reason to feel dissatisfied.

From the foregoing statement, it is clear that the misunderstanding respecting the Claims of the Welland Canal Company, has arisen from the circumstance, of

* See *infra*, No. —, for a copy of the Certificate issued by Government under the Act of 1843. See also, the Legal Opinions annexed, in regard to the true interpretation of that Statute.

the Capital Stock having been paid in Debentures (bearing Interest,) in 1843, instead of in ready Money. These Debentures were intended, of course, to be negotiable at par, or in other words, to be equivalent for so much Cash. Had Cash been received in lieu of Debentures, it would have been invested in the ordinary way, and have yielded similar Interest to that now paid by the Province, on the Debentures, but such Interest not being paid by the Province, the fact of its payment would not have been in any way confounded, as it has been, with the present claim of the Shareholders. Their demand is, not that they should continue to receive Interest on the Capital Stock, subsequent to 1843, for the Capital was wholly paid off in that year, and the Shareholders have no further concern in it, but it is that they should be allowed Interest, from 1843, upon the amount admitted to be due for back Interest, up to that time, or a suitable equivalent therefor, pursuant to the Sixth Clause of the Act, 7 Victoria, cap. 34.

Your Memorialist, therefore, begs Your Excellency will be pleased to authorize the issue of Debentures to defray this balance, and as in duty bound will ever pray. In behalf of the private Shareholders of the Welland Canal Company.

WM. HAMILTON MERRITT.

Quebec, March 5th, 1853.

No. 2.

To His Excellency the Right Honorable James, Earl of Elgin and Kincardine, K.T., Governor General of British North America, and Captain General and Governor in Chief in and over the Provinces of Canada, Nova Scotia, Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c., &c., &c.

The Memorial of the undersigned, Shareholders in the Welland Canal Company, respectfully sheweth—

That under the provisions of the Act incorporating the Welland Canal Company, passed in the fourth year of the Reign of King George IV., (1824,) Your Memorialists became Shareholders in the Capital Stock of this Company. The Government of the Province of Upper Canada also advanced, from time to time, under the authority of various Acts of the Legislature, by Loan and in Stock, considerable sums of money in aid of the work.

That by an Act of the Parliament of Upper Canada, passed in the seventh year of the Reign of William IV. chapter 92, (1837,) the Legislature deeming it expedient to convert the various Loans made to the Company into Stock, and to authorise the subscription, by the Government, of a further amount of Stock to the extent of £245,000, it was provided that the Capital Stock of the Company should be increased to £597,300, divided into 47,784 Shares of £12 10s. 0d. each, whereof the Government of Upper Canada should hold 36,360 Shares, the Government of Lower Canada 2,000 Shares, and the private Stockholders 9,424 Shares, and that the Government should have the right to appoint three out of the five Directors authorized to conduct the affairs of the Company; thereby giving the control to the Government, who thenceforth became the larger proprietors.

That with a view, however, to reward as well as to protect the interests of the Private Shareholders who had risked so much in the promotion of so great an enterprise, considered by many, for years, a wild and visionary scheme, although it has proved of vast public importance, it was provided that the Tolls received upon the Canal, after deducting the amount required for the charges then made thereon by law,

should first be annually applied to discharge the interest of £245,000 then authorized to be advanced, and that the remainder of the Income to be received by the Company should be divided among the Private Stockholders until it should equal six per cent. on the amount of their investment. This provision, giving a preference to the Stock held by private individuals over that subscribed for by the Government, was both equitable and just, because the public were indebted to the enterprise and sagacity of these gentlemen, who had not only perilled so much in advancing what ought to have been a great national undertaking up to that point at which the gigantic character of its results became apparent, but had by their energy and perseverance, conducted their great project beyond the chance of failure.

That by an Act passed by the Parliament of Canada in the 5th year of Her Majesty's reign, (1839) entitled "An Act to authorise the stock held by private parties in the Welland Canal to be purchased on behalf of the Province" after reciting that it was desirable to place the Welland Canal under the exclusive control of the Government, and for that purpose to provide for the purchase from the private Stockholders the Stock held by them in that work, amounting to £117,800, such a number of Debentures were authorized to be issued to the several Stockholders in the Welland Canal as should be equal to the amount of stock held by them (such Debentures to be redeemable in twenty years from their date and to bear an Interest of 2 per cent. per annum for the first two years, 3 per cent. per the third year, four per cent. for the fourth year, five per cent. for the fifth year, 6 per cent. for the sixth and following years; and it was thereby further provided that whenever the Tolls collected on the said Canal should annually amount to £30,000, other Debentures should be issued to the original Stockholders or their legal representatives for such sum as would make up 6 per cent Interest upon the amount of Stock by them subscribed and paid for, from the time the same should have been actually paid in.

That from the passing of this Act the affairs of the Canal came under the management of the Government, and the Stockholders ceased to have any control therein.

That the Legislative agreement thus entered into between the Government and the Stockholders clearly guaranteed that ultimately the latter should receive back the full amount of the principle and interest upon their original investment.

That by an Act passed in the seventh year of Her Majesty's Reign, after reciting, amongst other things, that the circumstances contemplated by the last in part recited Act, whereby the Private Shareholders were to have received Dividends from the Income of the Canal, had not arisen, and could not then arise; and that it was expedient to repeal the said Act and to make other provision for the payment of such Stockholders; the said Act passed in the fifth year of Her Majesty's Reign is repealed, and it is thereby provided, that Debentures, bearing date the 1st of January, 1845, to the amount of £117,800, and bearing Interest at the rate of five per cent. if payable in London, and six per cent. if made payable in Canada, should be issued to the said Private Stockholders.

That in accordance with the provisions of the former Act thereby repealed, it is further provided by the sixth Section of the last Act, That so soon after the completion of the said Canal as the Tolls received thereon for any one year should amount to £45,000, there should be charged upon the Consolidated Revenue Fund thereof an amount equal to six per cent. per annum on the Private Stock subscribed, from the time the same had been paid in, for the benefit of the Private Stockholders aforesaid, or their legal representatives. That by the seventh Section of the said Act it is further provided, That it shall be lawful for the Governor in Council, at any time after such receipt of Tolls, to direct to be issued to such Private Stockholders, or their legal representatives, Debentures for the amount of their respective claims, bearing Interest and payable in the same length of time

after their issue, and at the same places respectively, as if the same were issued for the principal sum invested by the original Stockholders.

That by an Act passed in the 8th year of Her Majesty's Reign, (1844,) entitled, An Act to amend the Act for purchasing the Stock in the Welland Canal held by Private Shareholders, after reciting, amongst other things, that the Shares in the Welland Canal Company were by the Act of Incorporation declared to be of the amount of £12 10s. 0d. currency, and were issued at that price in all parts of the Continent where the same were taken and subscribed; and also, that certain of the Shares were taken and subscribed in England, and that the subscribers paid in England for each Share £11 5s. 0d. sterling money, and received certificates declaring the subscribers entitled to the number of Shares mentioned therein at the rate of £11 5s. 0d. sterling, per Share, and that inasmuch as the Welland Canal Company received the benefit of the exchange, the subscribers having paid the amount of £11 5s. 0d. per Share in London, the Company had received more than £12 10s. currency per Share. And also, that the said sum of £117,800 was intended to repay the Private Stockholders the full amount advanced by them, and that Debentures had been issued accordingly to the subscribers who paid £12 10s. 0d. per Share, and that such sum was inadequate to pay the subscribers who had paid £11 5s. 0d. sterling per Share in London, and that it was just that all the subscribers should be paid for their respective Shares in full, it is provided that the further sum of £2,779 18s. 9d. currency, with Interest thereon from the 1st day of January, 1843, should be appropriated to supply the deficiency in the former Grant arising from such difference of Exchange, thus shewing still more clearly the scrupulous nicety with which the Legislature regarded the claims of the Stockholders to be paid their respective Shares in full.

That the Tolls on the Welland Canal for the year ending first January, 1852, amounted to considerably more than £45,000, whereby an amount equal to 6 per cent. per annum, on the private Stock subscribed from the time the same has been paid in for the benefit of the private Stockholders aforesaid, or their legal representatives, became chargeable upon the Consolidated Revenue Fund of the Province, and the said private Stockholders and their legal representatives thereupon become entitled to receive Debentures for the amount of their respective claims, bearing Interest, and payable in the same length of time after their issue, and at the same places respectively, as if the same were issued under the provisions of the said Act passed in the Seventh year of Her Majesty's Reign, to the private Stockholders aforesaid for the principal sum invested by them. That, on the 26th of January, 1852, an application was made on our behalf through the Provincial Secretary, soliciting that Your Excellency might be pleased to authorize the issue of the Debentures in conformity to the said Act.

That on the 16th of February, then next ensuing, the Provincial Secretary replied that His Excellency having referred such communication for the opinion of the Law Adviser of the Crown, is advised that the amount of back Interest to which the private Stockholders are entitled on their stock under the Act aforesaid, must be computed up to the 1st January, 1843, only, at which period Debentures had been issued for the principal.

That Your Memorialists having received Debentures accordingly for arrears of Interest up to that date, first January, 1843, without prejudice to their right to receive it up to the first January 1852, desire now respectfully to submit to Your Excellency that they are advised, that according to the spirit, true interpretation, and meaning of the several Acts before referred to, they are entitled to Interest up to the first January, 1852, being the period at which the Tolls on the Welland Canal amounted to £45,000.

Your Memorialists beg respectfully to submit, that, a payment in 1852 of 6 per cent. only up to 1843, upon the Capital Stock invested by them in 18[illegible], is not an

amount equal to 6 per cent. per annum on their Stock from the time the same was paid in, which are the words of the Act under which they claim Interest to January 1852, when they became entitled to receive it. The Act does not provide that they shall receive Interest from one given period to another, but that having received their Principal they shall be entitled to receive an amount equal to the Interest on their Capital at a future and indefinite period; and the period having been indefinite at the time the Act was passed is the reason why no specific sum for the interest was named, because it was uncertain what sum would be equal to interest hereafter to become due. This sum was made payable upon the happening of a future event and a necessarily indefinite period. The Question therefore is not what was the Interest on a given amount, at a given time to another given time, but what would be the amount upon the happening of an uncertain event equal to the Interest upon a certain sum, paid at a given previous and certain date; and our Memorialists submit that it is a question of arithmetical calculation, more for an Actuary than for a Counsel learned in the law, that the question is not whether the arrangements are more beneficial for the Government or for the Shareholders, but what the proper construction of the agreement really is. If however, it were important to consider the character of the agreement, it is plainly one most advantageous for the Government. The Tolls have steadily increased at the rate of 20 per cent. per annum for several years past, and according to the estimate of increase, the average Tolls between 1852 and 1862 will be £131,000 per annum: consequently, had the Shareholders retained their Stock and the consequent right to a dividend in proportion to their capital invested, their position would have been far more advantageous than the mere receipt of Principal and Interest at the end of nearly thirty years will place them in, as will fully appear from the accompanying statements from official sources.

The Canal was commenced in 1824, and from the scarcity of Capital in Upper Canada, as well as from the opposition given to the enterprise from various causes, but chiefly on account of its magnitude as compared with the resources of the Province, only £3,712 10s. 0d. was subscribed in Upper Canada, and the Province is chiefly indebted to Foreigners for its early progress; and it would be unworthy of a British Colony to reap such large advantages from their enterprise, and allow them to be the only losers. And it is an important consideration that those Stockholders paid their Subscriptions under an express pledge contained in the Law of 1825, (6 Geo. 4, chapter 2, section 15,) "that the Government would not take the possession and property of the Canal unless they paid to the Stockholders the sums "advanced by them, and twenty-five per cent. thereon in addition, nor unless, be-"sides these payments, it should appear that the Shareholders had actually receiv-"ed from the Tolls in every year, on an average, 12½ per cent. on their Stock."

It is, therefore, respectfully submitted, that if there should be any doubt still entertained of the strict construction of the law, such doubt should be cast in favor of the Foreign Creditor.

Your Memorialists, therefore, pray that Debentures for a sum equal to the Interest from 1843 to 1852, be issued in conformity with what they respectfully submit to be the legitimate construction of the several Acts of the Legislature relating to this important subject, or if the Executive Government decline the responsibility of settling this point at once in favor of the claimants, that Your Excellency will be pleased to cause the matter to be submitted to the Legislature at the coming Session to determine the point under consideration. And your Petitioners, as in duty, bound will ever pray.

JNO. ANTHON,
Executor, &c., of JOHN HONE, deceased, City of New York.
HANNAH MACLEOD,
CHARLES YATES, and others, &c., &c.

NEW YORK, 1st August, 1852.

No. 3.

(Copy.)

QUEBEC, 26th January, 1852.

Sir,—I have the honor to acquaint you, for the information of His Excellency the Governor General, that under the provisions of the 6th Section of the 7th Vic. cap. 34, the private Shareholders in the Welland Canal Company are entitled to receive Debentures for the back Interest, at the rate of six per cent. per annum on the amount of their Capital Stock, from the time it was paid in up to the time the Tolls on the Canal for any one year shall amount to the sum of Forty-five thousand pounds.

That period has arrived: the Income on the Welland Canal for the year 1851 exceeds £51,000, and the Tolls near £50,000.

I, therefore, most respectfully solicit, on behalf of the private Shareholders, that His Excellency may be pleased to authorize the issue of the Debentures in conformity to the said Act.

I have the honor to be, Sir,
Your obedient Servant,
(Signed,) WM. HAMILTON MERRITT.

Hon. A. N. MORIN,
Provincial Secretary.

No. 4.

SECRETARY'S OFFICE,
Quebec, 16th February, 1852.

Sir,—I have the honor, by command of the Governor General, to inform you, that His Excellency has had under his consideration in Council your letter of the 26th ultimo, requesting, on behalf of the Private Stockholders of the Welland Canal Company, that Debentures may be issued for the back Interest, at the rate of six per cent. per annum, on the amount of their Capital Stock, in conformity with the Act 7 Vic. cap. 34, the amount of Tolls on the said Canal, for the year 1851, having exceeded the amount specified in the sixth Section of the Act in question, viz., £45,000.

His Excellency having referred your communication for the opinion of the Law Advisers of the Crown, is advised that the amount of back Interest to which the Private Stockholders are entitled on their Stock, under the Act above cited, must be computed up to the 1st January, 1843, only, at which period it appears that Debentures were issued under that Act to the Stockholders, for the Principal, or amount of their Shares, bearing Interest at six per cent. per annum, from that date.

The amount of back Interest payable, up to the 1st January, 1843, appears to be £107,343 4s. 1d., and I have now the honor to request that you will place yourself in communication with the Honorable Receiver General, who has received the necessary instructions upon the subject.

I have the honor to be, Sir,
Your obedient Servant,
A. N. MORIN,
Secretary.

Honorable W. H. MERRITT,
Quebec.

No. 5.

QUEBEC, 20th February, 1852.

Sir,—I have the honor to acknowledge the receipt of your communication of the 16th instant, informing me that His Excellency the Governor General has been advised by the Law Officers of the Crown that the Shareholders in the late Welland Canal Company are entitled to back interest only up to the 1st January, 1843, on the ground that at that time they were paid the principal of their investment.

If this be the true legal construction of the Act, instead of rendering the Shareholders a service by obtaining it, I have done them an injury, inasmuch as the 2nd Clause of the Act of 1841 secured to them the back Interest when the Income from the Canal amounted to £30,000; this amount was realized in 1847, consequently by this interpretation of the Act of 1843, the Shareholders have lost four years Interest on their Capital.

Having been instrumental in inducing the original Shareholders, in an early day, to subscribe and invest their Capital in this undertaking, I have felt it my duty, from public principle, as well as a strong private feeling in their behalf, to secure them the full amount of Interest on their outlay, and have kept them duly advised, from time to time, of the progress of the Canal, assuring them it would provide the means fully to remunerate them; consequently very few of the original Shareholders have transferred their Stock. With this feeling, it is not probable that I could, on the part of the private Shareholders, have assented to the Act, had it not covered the Interest during the entire period; but convinced that it did and would be very near an equivalent for the non-payment of the Interest of 1843, it received my hearty concurrence. That the Government also entertained the same opinion, is apparent from the tenor of the Certificates issued at the time.

The 6th Clause referred to, defines the commencement and termination of this period,—from the time the money was paid in, to the time the Tolls amounted to £45,000. The Certificates then issued under that Clause, and all up to 1847, clearly and expressly point out what the holder thereof is entitled to receive. They are made out in favor of the Shareholder or Order, who is to receive legal interest on (the amount of Capital,) from and after (the date when the Capital was fully paid up), payable in Government Debentures so soon as the Tolls amount to the sum heretofore mentioned. Language could not be more explicit, or more clearly express the meaning and intention of the Act, than those Certificates which are nearly a transcript of the said Clause; and third parties holding them, will feel entitled to the full amount they cover.

Believing, further, that when the first Contract for purchasing the Canal was entered into in 1839, it was the intention of the Legislature to pay the full amount of Interest, and that the only reason it was not paid in 1843, was the insufficiency of the Tolls to meet it, the Government having only received, the preceding year, £23,946 10s. 6d.

That the 2nd Clause is a separate and distinct part of the Contract, referring to the payment of the Capital only; the 6th Clause to the payment of the Interest. Had this Capital been paid in money (instead of Debentures on which the Government pay the annual interest), it would have been closed at the time, and no attempt would have been made to deduct the Interest on that Capital from the Interest due in 1851 under the latter Clause.

For these reasons I beg leave to solicit His Excellency on behalf of the private

Shareholders to refer the Question of Interest, under the Clause referred to, to the decision of the ensuing Legislature.

I have the honor to be, Sir,
Your obedient Servant,
(Signed,) WM. HAMILTON MERRITT.

The Honorable A. N. Morin,
Provincial Secretary.

No. 6.

Secretary's Office,
Quebec, 25th February, 1852.

Sir,—With reference to your communication of the 20th instant, on behalf of the private Stockholders of the Welland Company, I have the honor to inform you that the Government will be glad to receive from you any evidence which it may be in your power to offer in support of the claim of the Shareholders; and that no objection will be made to the production of all papers connected with the case, if applied for by Parliament.

I have the honor to be, Sir,
Your most obedient Servant,
A. N. MORIN,
Secretary.

The Honorable
W. H. Merritt, &c. &c. &c.

No. 7.

Quebec, 5th July, 1852.

Sir,—A question having arisen as to the period to which the private Shareholders in the late Welland Canal Company shall be entitled to Interest on their original investment, I beg leave on their behalf to submit that the 6th Sec. of 7th Vic. Cap. 34. (herewith submitted) is conclusive on that subject. (For clause, *vide infra*, No. 9.)

There is nothing in the letter or spirit of the above which tends to the conclusion, that after the first day of January, 1843, the private Shareholders would be entitled to double Interest. But I contend that the act expressly declares that "as soon as the Tolls shall amount to £45,000, there shall be charged on the Consolidated Fund, a sum equal to six per cent. on the Capital Stock from the time the same was paid in;" now the Question is, what is a sum equal to the Capital Stock from 1828 to 1843? Why did not the Act state the exact sum to be then charged upon the Consolidated Fund, as in the case when the Capital was to be repaid, which was fixed at £117,800; clearly, because it was a sum which could not then be defined, it was left as a sum to be computed at a future time, and the fair inference is, that it was the intention of the Government that the Shareholder should receive first and last a sum equivalent to interest on his Capital, from the time it was paid, whenever the Tolls from the Canal itself would furnish the means. He received his Capital, and Interest thereon from the year 1843. What sum is equivalent to the Interest due to him from 1828 to 1843? Unquestionably not the bare amount of simple Interest on his Capital during that time, paid nine years after, but such a sum paid in

1852, as shall be equal to six per cent. on the Capital Stock "from the time it was paid in," to 1843. The intention undoubtedly was to repay the Capital with Interest from 1828, but this will not be accomplished if merely simple Interest to 1843, is paid in 1852.

Believing that the true spirit and meaning of the Act admits of but one construction, I consider it unnecessary to trouble you with any further reference in support of the claims of the private Shareholders.

I have the honor to be, Sir,
Your obedient servant,
WM. HAMILTON MERRITT.

Honorable ATTORNEY GENERAL,
&c., &c., &c.

No. 8.

QUEBEC, 14th September, 1852.

Sir,—I have the honor to enclose you, for the information of His Excellency the Governor General, the Memorial of Messrs. Bosanquet, Franks & Co., Agents to the Welland Canal Shareholders in London, placed in my hands by the Honorable George Moffatt, of Montreal, who has left for England.

Also a copy of a letter from B., F. & Co., to Mr. Moffatt, of the 27th August, received by last mail, accompanying the opinion of Sir Fred. Thesiger and Mr. H. J. Bushby, of London.

As this opinion fully corroborates what I have ever maintained was my intention in framing the Clause in the Act of 1841 and the Act of 1843, which ensured the back Interest to the private Shareholders, out of the Revenues from the Canal, whenever it yielded a sufficient sum to pay it, I trust the legality of that Clause will be no longer questioned, when borne out by the following facts:—

The Welland Canal cost the Company, up to the day of sale, £565,986 13s. 10d. The public paid, including the Capital to private Shareholders on 1st January, 1843, £393,444, effecting a saving of £172,542; at the same time the Revenues from Toll for 1842, the preceding year, had reached £24,975 11s. 8d., and it has now become one of the most useful Works, and promises to be one of the most fruitful sources of Revenue within the Province.

Under these circumstances, I respectfully submit that the legal opinions on the subject of the Interest due the Shareholders may be examined, and the Shareholders paid what they conceive they are equitably and legally entitled to receive.

I have the honor to be, Sir,
Your obedient servant,
WM. HAMILTON MERRITT.

Honorable A. N. MORIN,
&c. &c. &c.

No. 9.

(Copy.)

LONDON, 27th August, 1852.

The Honorable GEORGE MOFFATT,
Montreal.

Dear Sir,—We annex a duplicate of our last letter, and have now the pleasure to enclose a copy of an opinion which has been given by the Attorney General, Sir F. Thesiger, and Mr. H. J. Bushby, upon the further claims of the Welland Canal Shareholders, which, you will probably agree with us, should be presented with the Memorial. It appears to us to interpret the Act of Parliament so clearly and unanswerably, that we entertain full confidence that the Provincial Government will no longer hesitate to concede the point in question, and we trust that you will give your assistance in promoting the claim.

We are, dear Sir,
Your very obedient Servants,
(Signed,) BOSANQUET, FRANKS & CO.

To the Right Honorable the Governor General in Council.

MEMORIAL OF THE ENGLISH SHAREHOLDERS IN THE WELLAND CANAL COMPANY.

We, the undersigned, acting as Agents for the English Shareholders in the Welland Canal Company, beg leave respectfully to draw the attention of the Governor in Council to the following Clause in the Provincial Act of the Canadian Legislature of 1843, under which the Government is empowered to issue Debentures in payment of Interest on the Capital subscribed by the private Shareholders in that undertaking.

The words of the Clause run thus:—"That as soon after the completion of the "said Canal as the Tolls received thereon for any one year shall amount to the "sum of £45,000, currency, of this Province, there shall be charged upon the Con- "solidated Revenue Fund thereof an amount equal to six per cent. per annum on "the private Stock subscribed, from the time the same has been paid in, for the "private Shareholders, or their legal representatives."

Under the construction put upon this Clause by the Government of Canada, the private Shareholders in the Canal have, in this year, 1852, received Debentures for the amount of simple Interest on their Capital, calculated from the time it was paid in to the year 1843, in which year their Capital was repaid, being at the rate of about £84 per cent.

Your Memorialists humbly submit, that this construction of the Clause is neither borne out by the wording nor by the spirit of the Act.

The wording of the Act is extremely indistinct. For it will be observed, that while the point from which Interest is to be calculated is accurately fixed, the point to which the calculation is to be made, is left quite undefined.

It cannot be supposed that this omission is purely accidental. For if it was intended that Interest should be calculated only to the year 1843, from the time of subscription, there was no difficulty in the way of so wording the Act. The data also were at hand for calculating the exact sum to be paid, whenever the Tolls should reach the amount of £45,000, if 1843 was really the point of termination; and the total sum of Interest might therefore have been as clearly specified at the time of passing the Act, as the amount of Capital then to be repaid was specified, viz., £117,800. Instead of which the indefinite words are inserted, "an amount

"equal to six per cent. per annum, from &c.," without fixing any point at which Interest should cease to run.

No limitation having been fixed by the Act, it is submitted by your Memorialists that the Government are not at liberty to fix an arbitrary limit, according to their own construction, more especially as the tendency of the words is opposed to their interpretation. The indefiniteness of expression made use of implies that contingencies were contemplated which could not then be defined, and the words are open to several modes of interpretation.

1st. The words "an amount equal" (*i. e.* equivalent,) "to six per cent" on the Capital, even if January, 1843, is the point at which Interest was intended to cease, imply compound Interest to that date. Now compound Interest paid annually would make a sum of £122 17s. 9d. of Interest, due at that date, upon every £100 of Capital, calculated from March, 1829.

2nd. Compound Interest calculated to 1843, but not paid down till 1852, is not equivalent to compound Interest paid in 1843, but would amount to the sum of £207 12s. 3d. of Interest, on every £100 of Capital, if paid in 1852.

3rd. It cannot be denied that the words of the Act bear the construction, that six per cent. on the Capital should be calculated during the whole period, from the time of Subscription to the time of payment, viz., 1852; and compound Interest, at six per cent., from March, 1829, to January, 1852, would amount to the sum of £276 11s. 4d. of Interest, for every £100 of Capital.

Under these difficulties with regard to the true interpretation of the Clause, your Memorialists respectfully submit that the spirit of the agreement entered into with the Shareholders in 1843, should be the only guide.

Now the spirit of that agreement was, that upon relinquishing all claims whatever upon the Canal, the private Shareholders should be paid back their Capital with Interest at six per cent.; and no one will contend that repayment of Capital in 1843, and Interest in 1852, is equivalent to payment of Capital and Interest at the same time.

Your Memorialists will not dwell upon the fact of their having relinquished a bonus of 20 per cent., to be paid to them whenever the Canal should be assumed by the Government, which was provided by the Act under which they originally subscribed; nor of their having been deprived, without their consent, of all control over their property by the Act of 1843.

But feeling that they are putting forward only a just claim for the performance of a contract made with them by the Government of Canada; and mindful also, that the Province is henceforth about to reap the fruits of the original enterprize and Capital of the private Shareholders, by the receipt of large and increasing Revenues from the Canal; they leave their case with confidence in the hands of the Government for decision, relying that the most liberal construction of which the words of the Act are capable, in conformity with its spirit, will be the guide for interpreting the Clause in question.

BOSANQUET, FRANKS & CO.,
Agents to the Welland Canal Shareholders
in England and on their behalf.

London, 20th August, 1852.

No. 10.

QUEBEC, 10th March, 1853.

Sir,—The accompanying papers have been printed for the purpose of placing before each Member of the Executive Council the Act under which the Interest of the Private Shareholders in the Welland Canal Company was purchased by the Government, the Case submitted to Counsel, and the opinions thereon in the order they occurred.

The case put by Messrs. Bosanquet & Co. does not do justice to the Private Shareholders (*vide infra*, Letter G.); instead of refusing to provide the means to prosecute the work, the full amount of their Capital was paid in before 1829. The Act of 1837 didnot deprive the Shareholders of their Stock, which was retained as Capital, securing six per cent. Interest thereon. The Act of 1839, assented to in 1841, contained a provision leaving it to their option either to retain or dispose of their Stock. The Act of 1843 deprived the Shareholders of this option, but authorized the issue of Debentures at two different periods.

This is the only point for consideration; why did the Legislature prolong the time for payment of the Interest, then due, as acknowledged by the Act?—Because it was a part of the original agreement; although the Act does not refer to this cause nor as a natural consequence either of the legal opinions, the records of the Provincial Journals of Upper Canada referred to in the Memorial I had the honor to present on the 5th instant, clearly points it out. The terms first proposed by the Legislature in 1836, to purchase out the Private Shareholders, were ultimate indemnification, with due regard to the interest and convenience of the public.

Thence it is evident, that whenever the Income from the Canal itself furnished the means, it was then the intention fully to indemnify the Private Shareholders.

In 1838, the Tolls was only £6,723, barely sufficient to pay the Interest on the Capital, which was accordingly limited to two, three, four per cent., &c., &c., &c.

In 1842, the Tolls had reached £24,976, which was sufficient to cover the annual amount of Interest on the Capital, but not on the Interest, If the Income had reached £45,000, it is clear the Act of 1843 would have authorized the issue of Debentures for the Interest then due, as well as for the Principal; but as the Income did not, the time for issuing Debentures was prolonged, until the £45,000 was realized.

After that period should arrive, Debentures were to issue, to cover a sum equal to six per cent. for each and every year, from the time the Capital was paid in, as an equivalent for the non-payment of the Interest due in 1843. This was the view entertained by the Government at the time, as the Certificates for this second issue under the 8th Clause prove. It is also the interpretation of the Act, by the highest legal authority in Great Britain, and in the United States—an opinion founded on the Act itself, without a knowledge of the original proposal—that the Income from the Canal formed the basis of the purchase.

The Shareholders have never sought a departure from this proposition; if the Government think the Income furnished from the Canal not yet sufficient to repay the balance still due, there is no doubt the Shareholders would prolong the payment upon the same principle as the Act of 1843.

Or, if it is considered that the case has not been fairly put, it can be referred for the opinion of any Tribunal in England, or Canada, with a case drawn up by the

Attorneys General, accompanied with their opinions thereon, as well as those herewith submitted, and the accompanying documents.

I have the honor to be, Sir,
Your obedient Servant,

Honorable A. N. Morin,
Provincial Secretary.

W. HAMILTON MERRITT.

P.S.—The Case which in my judgment should be submitted to a stranger, should contain a brief narrative of the circumstances; something like the within.

W. H. M.

A.

By an Act of the Legislature of Upper Canada, passed in 1824, certain persons who were named in it, together with such others as should subsequently become Stockholders, were created a Corporation aggregate by the name of the Welland Canal Company, and the necessary powers were given to this Corporation to construct two Canals; one from the River Welland to Lake Ontario; the other from the River Welland to the Grand River.

The Stock was limited to £40,000 Provincial currency, divided into Shares of £12 10s. each.

The Act of incorporation expressly authorized other persons besides His Majesty's subjects to become Stockholders; and provided that after the first instalment should be paid in, on the Shares, they should be assignable on the books of the Company.

In the following year this Act was amended, and it was provided by the amendatory Law that the Capital Stock might be increased to £200,000, and the size of the Canal enlarged so as to adapt it to the sloop navigation.

It was provided also, that at any time after the expiration of fifty years after the completion of the Canal, His Majesty or His successors might assume the possession and property of the same, on paying to the Company for the use of the Stockholders, the full amount of the sums advanced by each, together with twenty-five per cent. upon the sums so advanced by them; provided, however, that it should not be lawful for His Majesty or His Successors to assume the property &c., of the Canal, unless it should appear from the account laid before the Legislature, that the Stockholders had received every year, upon an average, twelve and a half per cent. for every hundred pounds they possessed in the said concern.

This last provision was important, it varied from one contained in the Act of incorporation in two respects, that authorized the Government to take the work at the expiration of thirty years after it was completed, on the payment of the principal sums advanced by the Stockholders, and twenty-five per cent. added, and it did not contain the proviso by which this right depended on the Stockholders having received on an average twelve and a half per cent. per annum on their Stock. That clause in the Act of incorporation was repealed, and the provision in the amendatory Act was substituted.

Under this express stipulation, by which, if the Canal should be taken by the Government as a Public Work, the Stockholders were assured of receiving not only the principal sums paid by them and twenty-five per cent. advance, but also a sum every year, equal on an average to twelve and a half per cent, a large amount of Stock was subscribed and paid for out of the Province.

At a subsequent period the Government relinquished altogether the right of taking the Canal, and this part of the amendatory Act was repealed.

Various Acts were passed by the Legislature of Upper Canada at different times, by which the dimensions of the Canal and the Stock of the Company were increased. Further powers were conferred upon the Company, and public aid was given by loan and by Government subscriptions to the Stock; the Government in regard to such Stock being expressly placed on the same footing as other Stockholders.

In 1837, these Government Loans were converted into Public Stock, by a law which authorized the Government to subscribe £245,000 to complete the work, and directed the Income to be applied, after meeting existing charges, to the payment of the Interest on this sum, £245,000, and the remainder to be divided among the Private Stockholders, until it should amount to six per cent. on their investments.

It also gave the Government the entire control of the work, by appointing three out of five Directors.

The Stockholders subsequently complained, in a Memorial to the Legislature, that this was done without their assent or knowledge.

The amount received from this work, from 1839 to 1842, inclusive, if it had been applied according to this law, would have paid six per cent. on the sum of £245,000 subscribed by the Government, and six per cent. on the investments of the Stockholders, and would have left an annual surplus of £7,816 for Interest, or an additional Loan of £100,000 if required to complete the work.

In 1841, a law was passed by the Legislature of Canada to authorize the Stock held by private parties in the Welland Canal Company to be purchased on behalf of the Province.

In the preamble, it was declared to be desirable to place the Welland Canal under the exclusive control of the Province, and for that purpose to provide for the purchase from the Private Stockholders in that work of the Stock by them held, and which amounted to the sum of £117,800, and it was enacted that the Public Debentures might be issued to the several Stockholders for a sum equal to the amount of Stock held by them, redeemable in twenty years from the date, and bearing an Interest of two per cent. per annum for the first two years, and increasing one per cent. yearly until it reached six per cent. yearly.

And that whenever the Tolls collected on the Canal should annually amount to £30,000, the Receiver General should issue other Debentures to the Stockholders in such sums as will make up six per cent. Interest upon the amount of the Stock by them subscribed and paid for, from the time the Stock shall have been actually paid in, which Debentures shall be redeemable in twenty years, and bear Interest at the rate of six per cent. per annum, payable half-yearly.

It was declared to be at the option of any Stockholders to accept these terms, or retain their Stock with the rights secured to them by the Act of Incorporation and other laws; but after the Stockholders owning two-thirds in value of such Stock shall have accepted these terms, no Directors shall be elected on behalf of the Private Stockholders.

This Act was repealed by a Law passed by the Legislature of Canada, 9th of December, 1843, (7 Vic. cap. 34), which made further provision to enable the Government to purchase this Stock.

The Preamble refers to the Act of 1841. It also states that by the Act of 1837, provision was made for raising a Public Loan of £245,000, and that the Tolls received upon the Canal, (after deducting the charges then made thereon by law, or so much as should be necessary, should, in the first place, be applied to discharge the interest which should accrue on the said sum of £245,000,) should be divided among the several Stockholders until it should equal six per cent. on the amount of

their Investments; that by reason of difficulties, a small part only of that sum was actually raised, and the Canal was, therefore, not completed by means of that Loan; that it was in progress of completion by means of other and larger sums of money; that, therefore, the circumstances contemplated by that Act, under which the Private Stockholders were to have received Dividends from the Income of the Canal, have not arisen, and cannot now arise: and it was, therefore, expedient to repeal the provision for the payment of such Dividends. It also stated that it was represented to be for the interest of the Private Stockholders that the Law of 1841 should be repealed, and other provisions enacted in lieu thereof.

After this long Preamble, the Act contained Clauses by which the Law of 1841, and the provisions of the Law of 1837 for the division of Income among the Private Stockholders, were repealed, and it was enacted that £117,800 should be charged on the Consolidated Revenue Fund of the Province for the benefit of Private Stockholders, to whom Government Debentures were to be issued for their Stock, dated on the first of January, 1843, redeemable in twenty years, and payable in England or Canada at the option of the Stockholder, at the rate of five per cent. per annum if payable in England, and six per cent. in Canada; the Interest to be paid on the first of January next ensuing the issue thereof, and afterwards, to be paid half-yearly.

The Governor was authorized to direct the substitution of the Debentures issued under that Law in lieu of Debentures already issued, on application of the parties holding them.

The Act contained also the following Clauses, viz.:—

6th Clause. "That so soon after the completion of the Canal, as the Tolls received "thereon for any one year shall amount to £45,000 there shall be charged upon the "Consolidated Revenue Fund thereof an amount equal to six per cent. per annum "on the private Stock subscribed, from the time the same has been paid in, for the "benefit of the private Stockholders."

By the 7th Clause, the Governor is authorized at any time after such receipt of Tolls to direct Debentures to be issued to those Stockholders for the amount of their respective Claims at the same rate of Interest as above mentioned for the principal sum invested by them.

The 8th Clause enacts, that in case any Certificates or other documents shall have been issued to any such Stockholders under the Law of 1841, the holder shall be entitled to the same payments or Debentures and none other than they would have been entitled to under this Act (of 1843) if such Certificates had not been issued.

The private Stock was subscribed and principally paid as early as 1825; only 297 Shares were taken in Upper Canada; of the residue, 5570 Shares were taken in New York, 2411 in England, 40 in New Brunswick, and the balance in Lower Canada.

In consequence of a large amount of Stock having been reserved for the English market and not having been taken there, the Shareholders in the United States were compelled to pay up their Stock earlier than they expected, and on two occasions they sustained the undertaking on their individual credit.

The work has been carried on amidst all difficulties without interruption to completion; it is now in successful operation, of inestimable benefit, and in fact of indispensable necessity to a large and fertile and important part of Canada.

The Tolls have been rapidly increasing, until they have exceeded the amount of £45,000 for a year, with a prospect of a further and further increase each succeeding year.

Under these circumstances an opinion is solicited to the folllowing questions :—

1st. Does the letter of the Act entitle the Shareholders to claim Interest up to the time when the Tolls amounted to £45,000, that is to June 1852.

2nd. If not, what is the precise construction to be put upon the words, an amount equal to six per cent. per annum on the private Stock subscribed from the time the same has been paid in.

3rd. Do those words imply such a sum as shall, being paid now in 1852, be equivalent to an amount of six per cent. per annum on the Stock paid in 1843 when the Capital was discharged.

WM. HAMILTON MERRITT.

March 5th, 1853.

B.

Copy of CERTIFICATES issued by Provincial Government, under the Act of 1843.

—

This is the form of Certificate issued from the Inspector General's Department, prior to 24th June, 1845.

JOS. CARY, Dy. I. G.

—

(No. 32.)

INSPECTOR GENERAL'S OFFICE,
MONTREAL, (Canada,) 14th March, 1845.

This is to certify, that William Dawson, Esquire, or order, is entitled to legal Interest at the rate of six per cent. per annum, on Eight hundred and seventy-five pounds, Provincial Currency, from and after the seventh day of February, 1827,—being the amount paid for Seventy Shares of Stock held by him in the Welland Canal Company—payable in Government Debentures, so soon after the completion of the said Canal as the Tolls received thereon for any one year, shall amount to the sum of Forty-five thousand pounds, currency of this Province, under the provisions of an Act passed in the 3rd Session 1st Parliament of Canada, 7th Victoria, 1843.

(Signed,) JOS. CARY, Dy. I. G.

Witness. (Signed,) WILLIAM DICKINSON.

—

Certified, JOS. CARY, Dy. I. G.

The first Certificate, in the form annexed, with the interlineation of the words "up to 1st January, 1843" was issued on the 24th June, 1845. In which form, Certificates covering 782 Shares have been issued, and under former Certificates 8,642 Shares.

JOS. CARY, Dy. I. G.

—

(No. 104.)

INSPECTOR GENERAL'S OFFICE,

Toronto, (Canada,) 26th February, 1851.

This is to certify, that George J. Mountain, D. D., or order, is entitled to legal Interest at the rate of six per cent. per annum, on One hundred pounds, Provincial Currency, from and after the 2nd day of December, 1826, up to 1st January, 1843, being the amount paid for Eight Shares of Stock held by him in the Welland Canal Company—payable in Government Debentures, so soon after the completion of the said Canal as the Tolls received thereon for any one year, shall amount to the sum of Forty-five thousand pounds, currency of this Province, under the provisions of an Act passed in the 3rd Session 1st Parliament of Canada, 7th Victoria, 1843.

(Signed,) JOS. CARY, Dy. I. G.

Witness. (Signed,) WILLIAM DICKINSON.

Certified, JOS. CARY, Dy. I. G.

Opinions of Eminent Lawyers upon the proper Construction of the Act 7 Vic. cap. 34. (For a Copy of the Act itself, see infra, No. 15, Appendix L.)

C.

OPINION OF JUDGE MASON.

The sixth Section of the Act of the Provincial Parliament of Canada, in relation to the Welland Canal, passed in the 7th year of Victoria, provides "That so soon "after the completion of said Canal as the tolls received thereon, for any one year, "shall amount to the sum of £45,000, currency of this Province, there shall be "charged upon the consolidated revenue fund an amount equal to six per cent. per "annum on the private stock subscribed from the time the same has been paid in "for the benefit of the private Stockholders aforesaid, or their legal representa-"tives."

The question is proposed, up to what period is the six per cent. per annum to be calculated? If we look at this Section alone without reference to any other part of the Act, the answer appears to me to be very plain. The calculation is to be made up to the time when the amount is charged on the consolidated fund. If it is to stop short of that time, at what time is it to stop? There is nothing in the Section which indicates any other time, and no other can be inferred or presumed from the language employed, and the construction I have given must I think be adopted as the plain and obvious one, unless it is clearly inconsistent with other provisions of the Act.

I cannot find any clause or provision in the other parts of the Act, which show that a different period was contemplated. The fourth Section has been referred to as bearing on this question. It provides for issuing Debentures to the private Stockholders for the principal of their Stock, bearing interest at six per cent. per annum, from the first January, 1843. And it is inferred from that Section that it was the intention of the Legislature to limit Debentures for the six per cent. at that

time, as otherwise the Shareholders would receive, for the portion of time running between the passage of the Act and the time of payment, double interest.

If such was the intention of the Legislature, it is very surprising that they should have left it entirely as a matter of inference to be gathered from other parts of the Act, instead of expressing it in clear and unequivocal terms. It would have been very easy to have stated that the amount should be calculated from the time the Capital had been paid in until the 1st of January, 1843, or until the issuing of the Debentures for the Capital with Interest, and no dispute could then have possibly arisen. The absence of any such clause under the circumstances affords strong if not conclusive evidence that no such limitation of the six per cent. per annum was contemplated.

The construction which would thus limit the allowance of the six per cent. proceeds on the assumption that the Legislature meant that the Private Stockholders should, under no circumstances, receive more than what would amount to six per cent. Interest on their Capital, without any regard to the time at which such Interest might be paid. But such an assumption, it appears to me, is entirely gratuitous. It is not warranted by any thing contained in the Act. The six per cent. per annum is not given as interest, or by way of interest, but rather as a compensation or bonus for the loss of Interest. The word "Interest" does not appear in the Section. The provision is for an amount equal to six per cent. per annum on the Stock from the time it was subscribed and paid, which is to be charged on the Consolidated Fund for the benefit of the Private Stockholders. It is in terms a charge for their benefit, and not merely an appropriation for the payment of a debt for which the Government was equitably bound.

The facts which appear on the face of the Act show, I think, that the construction I have given to this Section is not an unreasonable one. It appears from the Act itself, including the Preamble, that the Private Stockholders had paid their money towards the building of the Canal some time before the 7th year of William the Fourth, that is before the year 1836,—that at the time of the passage of the Act, no Interest on the monies thus paid had been received,—that the Government had taken the Canal out of the hands of the Stockholders, and recognized the equitable claim of the Stockholders on them for the amount they had thus paid, by issuing Debentures to them for such amounts with Interest, but that as to the back Interest they postponed the payment of it for an indefinite period and until the revenues of the Canal should reach a sum considerably exceeding not only the principal sums advanced by the Private Stockholders, but also the sum of £245,000 in addition thereto, which the Government undertook to raise by Loan for the purposes of the Canal. Should the Canal revenues reach the sum of £45,000, it would show that the enterprise had been successful, and be an omen of a much larger revenue in time to come, the whole of which would be received by the Government. It is, therefore, not unreasonable to suppose that the Legislature intended, if the Private Stockholders yielded up all the prospective advantages to be derived from the revenues of the Canal, to deal with them on liberal terms whenever the Canal revenues should warrant it, and instead of merely paying them a sum amounting in the aggregate to simple Interest, to allow them an amount which, although it would not place them in the same situation as if they had regularly received their Interest, yet would compensate them, in some degree, for their losses in being so long kept out of it.

Such a supposition is certainly not an extravagant one. It would be creditable to the Legislature, and would be in entire accordance with the letter of the Act. It shows a reason for its being couched in the language used, and also that the obscurity is only apparent, and arises from an erroneous view of the equities of the case, growing out of the fact that the Stockholders have since 1843 received Interest on the Principal.

But for this erroneous idea, there could be no question as to the meaning of the sixth Section, and I think it is manifest from a perusal of the whole Act, including

the Preamble, that the obvious meaning is that which best accords with the intention of the Legislature.

I am, therefore, of the opinion that the Stockholders are entitled, under the Act, to six per cent. per annum on the amount of Stock subscribed by them respectively from the time the same has been paid in, until the time when the charge is to be made on the Consolidated Fund.

JOHN L. MASON.

New York, 22nd November, 1851.

D.

CASE and OPINION of SAM. SHERWOOD, Esquire.

The Private Shareholders of the Welland Canal made their Subscriptions in about 1826, and paid in their Subscription money,—the Government Stock eventually exceeded in amount that of the Private Stockholders, and the Government, in consequence, retained the control,—the Canal was completed and commenced its operations,—no Dividends, however, were made, but the Tolls were received by the Government. Several efforts were made at different periods to give the Private Stockholders either a Dividend or an equivalent for the Funds they had invested.

In 1843, an Act was passed, intituled, "An Act to repeal a certain Act therein "mentioned, and to make further provision for enabling the Provincial Government "to purchase the Stock held by private parties in the Welland Canal." At that period the principal of the Private Stockholders amounted to £117,800, which had been paid in about seventeen years previous, and at six per cent. per annum would, in sixteen years and eight months, have given cent. per cent., or £117,800.

The apparent design of the Act was to fund the Principal and Interest, making £235,600, to issue Debentures for one-half, payable in twenty years, six per cent. Interest, payable semi-annually; or five per cent. Interest, if payable in England.

And if the Canal should realize the amount represented, the Government would pay the other half, and accordingly the second section provides "that there shall be "charged upon the consolidated revenue of this Province, for the benefit of the "private Stockholders in the said Welland Canal, the sum of £117,800 currency of "this Province, with interest thereon from the 1st day of January, 1843."

And the sixth Section provides for the payment of the other half, when the aggregate of the tolls should reach a given amount, viz: "That so soon after the "completion of the said Canal, as the tolls received thereon for any one year shall "amount to the sum of £45,000 currency of this Province, there shall be charged "upon the consolidated revenue fund thereof, an amount equal to six per centum "per annum on the private Stock subscribed, from the time the same has been paid "in, for the benefit of the private Stockholders aforesaid, or their legal represent-"atives."

The 7th Section provides, "that Debentures shall be issued to such Stock-"holders for the amount of their respective claims, bearing interest and payable in "the same length of time after their issue, at the same places" &c. as the previous Debentures.

It is quite certain that at the time of the passage of this Act in 1843, the interest at six per cent was equal in amount to the principal.

And that the Government deemed it wise to pay the Stockholders their principal and interest, and take the entire control and direction of the Canal.

The first class of Debentures were directed to be issued, and were issued, "for "the principal sum invested" by the Stockholders.

The second class of Debentures are provided to be issued when the tolls should attain a certain sum.

The amount of each Debenture was not accurately known, and could not be given, but the *data* from which the computation is to be made is given.

The time when the Stockholder "paid in" the stock subscribed by him, is the commencement, and the time when the tolls amount to £45,000 in any one year is the time for issuing the Debentures.

The sum to be an amount equal to six per cent per annum on the Stockholders' subscriptions so paid in.

The Stockholders may not all have "paid in" on the same day, there may have been months and perhaps a year's difference, and the discrimination is made, by allowing to them respectively six per cent from the time when they actually "paid in."

When the Act was passed in 1843, the amount had doubled, and the compromise apparently was intended to be made principal, discriminating only among the Stockholders as to the time of computation from their respective payments. Hence, the reading of the Act as to the second class, which gives six per cent per annum on the original principal from the payment of such principal to the issuing of the Debentures, and which are to be issued at the end of the year when the tolls reach £45,000, payable in 20 years from their date, carrying six per cent interest payable semi-annually.

In examining this Act of Parliament providing for the purchase of and remuneration to the private Stockholders of the Welland Canal, I have not been able to discover any ambiguity. The question raised is, how long is the six per cent to be allowed, for which the Debenture is to be issued?

It seems to be entirely plain, it must be allowed from the day the original Stock was "paid in" to the end of the year when the tolls should reach £45,000, and when the Debenture should be dated, and contain the residue of the contract.

The time for the beginning is fixed by the words when "paid in"—the end is fixed by the words "so soon after the tolls amount to, &c." The Governor shall "after receipt of such tolls direct to be issued the Debentures, &c." There is no exclusion of a portion of the time "from the paying in" to the issuing of the Debenture.

I am of opinion that the direction is imperative that "so soon" as the tolls in one year reach £45,000, six per cent per annum from a given day shall be charged to the consolidated revenue fund, and the Governor shall issue his Debentures therefor, payable as prescribed by the Statute.

S. SHERWOOD.

New York, 25th November, 1851.

E.

OPINION OF JUDGE GALE.

I consider the foregoing opinion as containing the only fair and legitimate construction of the Statute therein referred to, and as being the only interpretation thereof which can afford an approximation towards a compensation for the outlay of the original Stockholders of the Welland Canal. I use the word approximation,

because even this construction will by no means amount to a full compensation for the value of what the Stockholders would have obtained if the interest had been paid to them annually from the time of the payment of their Stock. Had the Government constructed the Work themselves, and issued Debentures for the payment thereof, payable half yearly, it would have amounted to a much larger sum. Any construction of the Statute, less favorable to the Stockholders than is expressed in the foregoing opinion, would not only seem forced and incompatible with the object and tenor of the Statute, but would unquestionably be inconsistent with the claims to a fair remuneration for their original outlay, which justice and equity entitle the Stockholders to receive, out of the profits of an undertaking so successful and important to the Province in its results.

SAML. GALE.

MONTREAL, 20th January, 1852.

F.

OPINION OF MARSHALL S. BIDWELL, ESQUIRE.

I have examined the Statute of Canada, 7 Vic. cap. 34, with reference to the question to what time the per centage mentioned in the sixth clause is to be computed.

I am of opinion that it is to be computed and allowed to the period when the tolls shall amount to £45,000 in one year.

I think that this is the fair import of the language which the Legislature has used, and that it is not controlled by other provisions of the law, or by the circumstances of the case. The latter, on the contrary, furnish reasons for a construction favorable to the Stockholders. Among these circumstances, the following may be mentioned; most of the Stockholders were foreigners and non-residents, and did not share in the incidental benefits, which men of business and owners of property in the Province, derived from the work; most of them had paid in their money under an express pledge that the work should not be taken by the Government without reimbursing the Stockholders for the money which they paid, and an advance of twenty-five per cent on it, nor unless they had, on an average, received twelve and a half per cent annually; the enterprise was hazardous, and, if successful, fairly entitled those engaged in it to profits in proportion to the risk run: it was of public importance and utility, and those by whose means and at whose expense and risk it had been prosecuted so nearly to completion, deserved a liberal and indulgent consideration from the Legislature and Government: the prospects of a speedy completion and of ultimate remuneration, were, at the time when the law was passed, becoming more and more favorable; the Government considered it of importance for public purposes to take the entire control of the work, and by this law and previous legislation had assumed the dominion and exclusive control of the work, including the regulation of tolls, salaries and expenses, and had virtually annulled the rights of the Stockholders, on terms prescribed by itself, which creates a presumption, (in justice both to the rights of the Stockholders and to the equity and honor of the Government,) that the terms were intended to be so liberal as to preclude all doubt of their acceptance; and finally, the preamble proves that the law, according to its true construction, was supposed to be "for the interest of the private Stockholders," which it would not have been, as compared with the law of 1841, if the per centage was to be restricted to 1st January, 1843.

If, in the consideration of this question, analogous cases were to be regarded, I think that the conclusion would be in favor of a liberal construction.

The Government and the private Stockholders stood much in the relation of co-partners to each other; one of whom by the exercise of a paramount authority takes to himself the whole of the partnership property and business for his own benefit, before any dividend has been received by his co-partner: he would justly be chargeable with all the disbursements of his co-partner and the current rate of interest to that time, on the ground that "it is but natural justice that he who has "the use and benefit of another's money should make compensation for it," and, if payment of such principal sum and interest were, for his convenience, deferred, interest would be charged on the aggregate sum. This is a general principle of jurisprudence, enforced equally in Courts of Law and Equity and Admiralty. 2 Hagg. Adm. R. 137, The Dundee, Holmes.

Under the most liberal construction, the Stockholders will receive no adequate indemnity. For them the enterprise has been unfortunate. All the benefits of the work have been reaped by the people and government of the Province. If there is any ambiguity in the law, this circumstance presents a legitimate consideration in favor of a liberal construction, as being most equitable, most probable, and most honorable to the legislature. It is to be presumed that they intended to deal fairly with their co-partners, when, by the exercise of Sovereign Authority, they took their property for public purposes.

MARSHALL S. BIDWELL.

New York, October, 1852.

Dundee, Holmes, 2 Hagg. Adm. R. 137.

In a cause of collision where payment of a sum for damage, interest and costs reported to be due had been delayed by the party liable, the other party is entitled to interest on the whole sum from fifteen days after the date of such report, and, Stat. 53 Geo. III, cap. 159, sec. 1, limiting the liability of owners to the value of the ship, appurtenances and freight, applies only to the original claim for damage and extends not to costs and interest.

OPINION BY LORD STOWELL.

"The justice of this case lies entirely with the Counsel who have argued on the "part of those who have sustained the injury, and who apply for full restitution. "It is objected in the first place that £350 is stated for interest, and that in the "further report, interest is allowed on the whole amount of the former report in-"cluding that item. This, it is argued, is compound interest,—interest upon in-"terest, and ought not to be allowed. To which, it is answered with perfect jus-"tice and conformity to the practice of all courts, that where interest is so settled, "it shall bear interest thereon, and that the same shall not be deemed a compound "interest, charging the party with an unfair pressure in such account. It is agree-"able to the practice of merchants, and agreeable to the practice of the Court of "Chancery, and has been so held in this Court, where interest is made up, it then "becomes principal and bears interest as part of the principal."

(This was the last reported decision of Lord Stowell: he had been about thirty years Judge of the High Court of Admiralty, having been previously a distinguished Judge in the Ecclesiastical Courts. He is considered to have been one of the greatest Jurists of Europe.)

G.

CASE SUBMITTED FOR THE OPINION OF THE LAW OFFICERS OF THE CROWN IN ENGLAND.

About the years 1827, 1828 and 1829, several sums of money were raised in America, Canada and England, amounting together to the sum of £117,800, Canada Currency, towards making a Canal in Canada, from Lake Erie to Lake Ontario, called the Welland Canal. Large sums were also subscribed by the Government of Canada, for the same purpose, as public Shareholders in the Company.

In the year 1843 more money was required to place the Canal in an efficient state, towards which the private Shareholders were unwilling to make any further contribution.

In that year, therefore, an Act of the Provincial Legislature was passed, intituled, "An Act to repeal a certain Act therein mentioned and to make further provision for enabling the Provincial Government to purchase the Stock held by private parties in the Welland Canal." A copy of the Act is sent herewith. By the 4th Clause of that Act, the Government was authorized to issue Provincial Debentures for the sum of £117,800, Canada Currency, in repayment of the Capital subscribed by private Shareholders. These Debentures have been issued, and interest at the rate of £6 per cent per annum in Canada, and £5 per cent in England has been paid upon them from the 1st January, 1843. By clause 6th in the same Act, provision was made for payment to the private Shareholders of interest upon their Capital, as follows:—

"And be it enacted, that so soon after the completion of the said Canal as the "tolls received thereon for any one year shall amount to the sum of £45,000, Cur-"rency of this Province, there shall be charged upon the consolidated revenue "thereof, an amount equal to £6 per cent per annum on the private Stock sub-"scribed from the time the same has been paid in for the benefit of the private Stock-"holders aforesaid, or their representatives."

The Tolls reached the required amount of £45,000, in 1851.

Government proposed to pay interest on the Capital at 6 per cent up to the 1st January, 1843, only, and the same amounting to £107,343 4s. 1d. has been received by the private Shareholders in Provincial Government Debentures, bearing interest from 1st January, 1852, but these Debentures were received under protest.

The Shareholders therefore contend that they have not received all that is strictly due to them, as either they are entitled to receive an amount equal to £6 per cent. per annum from the time their Capital was subscribed to the time when the tolls amounted to £45,000, or they were entitled to receive an amount equal to £6 per cent. per annum from the time their Capital was subscribed to the 1st January, 1843, which would not be the case if the interest were not received until 1852. Your opinion is therefore requested on the following points:—

1. Whether the letter of the Act entitles the Shareholders to claim Interest up to the time when the tolls amounted to £45,000, that is, to January, 1852.

2. If not, what is the precise construction to be put upon the words "an amount equal to six per cent. per annum on the private Stock subscribed from the time the same has been paid in."

3. Do those words imply such a sum as shall, being paid now, in 1852, be equivalent to an amount of six per cent. per annum on the Stock paid in 1843, when the Capital was discharged.

H.

OPINION OF SIR F. THESIGER, AND OF H. J. BUSHBY, ESQUIRE.

We are of opinion, that in the absence of any express limitation of the time up to which the per centage was to run, the contingency on which the per centage was to become payable defined also the period up to which it was to be calculated.

The construction which places this limit in 1843, has no warrant in the words of the Act; and it is further negatived by the probability that any sum already defined when the clause was framed would either have been stated as a specified amount, or as a per centage to be calculated during a specified period. These difficulties vanish, if, adopting the natural construction, the clause is taken to have contingently guaranteed a sum incapable at the period of complete definition; and the accumulation of which during such time as the contingency remained unfulfilled, secured the Shareholder against loss from delays in the carrying out of the work. For it is evident that while the ultimate completion of the undertaking was rendered tolerably certain by the amount of public money embarked in it, yet delays inevitable or otherwise, might have been interposed after it came under Government management, which, but for some such proviso, would have impaired indefinitely the value of a compensation, limited by a definite period, though payable at an indefinite one.

On these grounds we are of opinion, that the Shareholders are entitled to an amount equal to 6 per cent. per annum on the private Stock subscribed from the time it was paid in, up to the 31st December, A.D. 1851.

FRED. THESIGER.
H. J. BUSHBY.

24th August, 1852.

I.

(Copy.) LONDON, 15th October, 1852.

The Honorable WM. HAMILTON MERRITT.

Dear Sir,—We have duly received your letter of the 13th ultimo, and have now much pleasure in forwarding the inclosed copy of an opinion in which the Solicitor General, Sir Fitzroy Kelly, has expressed himself in favor of the claims of the Welland Canal Shareholders.

We have not yet been able to procure the opinion of Sir Alexander Cockburn, which we will take the earliest opportunity of transmitting to you when obtained.

We are, dear Sir,
Your very obedient Servants,
(Signed,) BOSANQUET, FRANKS & Co.

OPINION OF SIR FITZROY KELLY AND H. J. BUSHBY, ESQUIRE.

We are of opinion that the Stockholders are entitled by the Act to an amount equal to six per cent. per annum on the Capital, from the time it was subscribed up to the period of the tolls amounting to £45,000.

(Signed,) FITZROY KELLY.
" H. J. BUSHBY.

J.

London, 5th November, 1852.

The Hon. Wm. Hamilton Merritt.

Dear Sir,—Referring to our letter of the 15th ultimo, of which the annexed is a duplicate, we have now the pleasure to enclose a copy of the opinion of Sir Alex. E. Cockburn, which is strongly in favor of the claims of the Welland Canal Shareholders. We also forward herewith a Statement of the Case on which the above opinion, together with those of the Attorney and Solicitor Generals already transmitted, were delivered.

We remain, dear Sir,
Your faithful and obedient Servants,
BOSANQUET, FRANKS & Co.

OPINION of SIR ALEXANDER E. COCKBURN.

(Copy.)

We are of opinion that the Act entitles the Shareholders to claim six per cent. on the Capital subscribed, from the time when it was paid in, not merely up to the 1st January, 1843, but to the period when the tolls amounted to £45,000.

(Signed,) A. E. COCKBURN.
" H. J. BUSHBY.

K.

OPINION of the Honorable H. J. BOULTON.

By 4 & 5 Vic. cap. 48, after reciting that it was desirable to purchase from the Private Stockholders of the Welland Canal, the Stock held by them, amounting to £117,800, it is enacted, that Debentures shall be issued to each Stockholder for a sum equal to the amount held by him; such Debentures to be redeemable in twenty years, and bear Interest of two per cent. per annum for two years, three per cent. for the third year, four per cent. for the fourth year, five per cent. for the fifth year, and six per cent. for the sixth and following years, to be chargeable on the Public Revenues of the Province.

It is also further provided, that when the Tolls on the Canal shall amount to £30,000, Debentures shall be issued to the Stockholders for sums equal to six per cent. on the Stock subscribed, from the time it was actually paid in; which Debentures (for the Interest,) shall be made payable in twenty years from the date, and bear Interest at six per cent., payable half-yearly,—Provided, that no Stockholder should be bound to exchange his Stock for Debentures.

This Act, although it relates to the public Revenue and to public interests, is nevertheless to be regarded in the light of a private Act so far as it relates to the Stockholders, and is to be construed in the same manner as any agreement would be construed entered into by the public with an individual. This Act is not compulsory even in its terms; it amounts to an offer by the State to the individuals to sell their Stock to the Government on the terms specified in the Act, and which the Stockholders were at liberty to accept or reject, as they might be advised.

Some of the Stockholders, it is said, did not accept the terms, and consequently remain Stockholders, and entitled to all the rights of Stockholders, so far as dividends may be concerned. The large majority, however, did accept the terms offered, and thereby acquiesced in the proposition made by the Act on behalf of the Public, and became parties to it.

The Contract so entered into by the Public with each Stockholder coming in under the Act was this, that each Stockholder would sell his Stock at par, and take Debentures in payment for the principal, payable in 20 years, with two per cent. Interest for two years, three for third year, four for fourth year, five for fifth year, six per cent. for the remainder of the period, upon condition, however, that upon the contingency arising that the Tolls should amount to £30,000 per annum, the Stockholders should receive a Debenture for the back Interest, and should carry Interest until ultimately paid. The obvious meaning of the whole being, that the Stockholder was, at some time or other, to get his Principal and Interest for his Stock, and so to sell at par, and be no loser. This was fair to the Stockholder, and beneficial to the public, as they thereby obtained the control of the work. By 7 Vic. cap. 34, after reciting part of the former Act, and part of another Act not necessary to notice, and that it had been represented to be for the interest of the private Stockholders that the first Act should be repealed, and other provisions made in lieu thereof, it is enacted that Debentures bearing Interest at the rate of six per cent., if payable in Canada, should be issued, bearing date 1st January, 1843, for the Principal. Provided that nothing in the Act contained should make void any Debenture issued under the former Act, thereby preserving the rights of parties and preserving the character of a bargain.

It is further enacted, that so soon after the completion of the Canal as the tolls amounted to £45,000, there shall be charged upon the Consolidated Revenue Fund a sum equal to 6 per cent. on the Capital Stock from the time the same was paid in, but the Act does not say up to what time it is to be calculated. As this is a legislative agreement and must be so construed, we must take into consideration the facts of the case on both sides, or not regard extrinsic facts at all.

If we do not regard extrinsic facts, we cannot know whether the Principal sum has been liquidated by means of Debentures or not, and if so, we cannot give credit for any Interest having been paid at all upon the Principal. If however, we are to take facts into consideration, and ascertain when the Debentures bearing Interest were issued, so we must take into consideration the time when the money was paid on the Stock and the amount due for Interest when the Act was passed, which upon a calculation even at simple Interest, would produce a sum as nearly as may be equal to the Principal, and therefore as it would be reasonable after about seventeen years delay, to make up the amount and make a rest, the Legislature may well be considered to have meant that Interest on the Principal, or a sum of Interest equal to the Principal should bear Interest up to the time when the Tolls should amount to £45,000, which was an indefinite period, and would therefore require a calculation of some kind and upon some principle not to be had at the passing of the Act, and therefore they meant that the Interest should be calculated up to the time of the contingency happening. If the time of the contingency happening was to form no ingredient in the calculation, and the party was only to get a Debenture for the Interest then due, the Act might as well have authorised the present issue of Debentures for the Interest, but postponing the payment of Interest thereon until the contingency should have happened; that is to say, the Debentures might have been issued for the amount of Interest then due, payable with Interest at 6 per cent., and at 20 years from the time of the happening of the contingency. Another mode of making the calculation, and which ought to be done under such an agreement, according to the construction most favorable to the party who acquiesced in it and most strongly against the party propounding it, is this, calculate as be-

tween merchant and merchant the Interest from the day when the Stock was paid up to the end of each year, and adding it to the Principal up to the day when the contingency shall happen, and then give credit to the Government for their Principal and Interest to the same day when the final balance should be struck for which the new Debenture should be given. It appears to me, that merely calculating the Interest up to the day when the first Debentures were given, is neither consistent with the Act nor with justice to the parties. The Act clearly meant either to calculate Interest on the Principal up to the date of the contingency, which would be just, or by making rests annually and giving credit for Interest received under the Debentures. What sum is equal to 6 per cent. is a matter of fact, and to say twenty years hence that simple Interest on a given sum for a certain period, but not to be paid for an indefinite period afterwards, is equal to the given rate of Interest, is inconsistent with reason and is not true in fact; the time of receipt has a vast influence upon its equality—a smaller sum payable in advance would be equal to a larger sum payable in future; £15 being the Interest on £250 paid twenty years after it fell due, is as an abstract proposition 6 per cent. on £250, but being paid so many years afterwards, is not as a matter of amount and justice between man and man equal to 6 per cent. on the principal sum lent or advanced. Is £15 payable ten years hence equal to £10 payable now? Certainly not; the two sums are equal, but their relative values are unequal. It does therefore appear to me, that the fair, just and true construction, which ought also to be a liberal one in favor of the public creditor, is to construe the Act as warranting the calculation to be made as I have indicated.

I must therefore say, that if I were the party called upon to decide between the Stockholders and the Government, I should calculate the Interest up to the time when the Canal Tolls amounted to £45,000, which, I feel quite convinced, was the intention of the Legislature, and is the fair and liberal construction of the Act.

H. J. BOULTON.

In the matter of the Claim of the late Stockholders in the Welland Canal Company for arrears of Interest, from 1843 to 1852, on the amount of their Stock paid in.

I have again perused the several Acts of 4 Geo. IV., cap. 17; 7 Will. IV., cap. 92; 4 & 5 Vic. cap. 48; 7 Vic. cap. 34; and 8 Vic. cap. 74, and have carefully considered the several provisions thereof bearing upon this subject, and am of opinion, that the several Acts and amended Acts passed from time to time to enable the Government to purchase the Stock held by Private Stockholders, and for acquiring the full possession and entire control of the work, must be considered as constituting an Agreement between the Government and the Stockholders, and that having been made and proposed by the Legislature for the concurrence of the Stockholders, who subsequently adopted it by selling their Stock on the terms proposed, should, and by any tribunal would, be construed most favorably for the Stockholders, who were not parties to the settling those terms, and consequently had a right to look upon and accept those terms according to their most liberal construction. These are the principles which I consider ought to govern any legal consideration of this question. Let us now see what are the provisions of the last amended Act finally settling those terms. The 6th sec. 7 Vic. cap. 34, provides, "That so soon after the completion of the Canal as the Tolls received thereon for any one year should amount to £45,000, there should be charged upon the Consolidated Revenue Fund of the Province, an amount equal to six per cent. per annum on the private Stock subscribed from the time the same had been paid in, for the benefit of the private Stockholders." It is clear, from the tenor of the

whole of the provisions of the Acts before cited, that the intention of the Legislature was to offer the Stockholders full payment of the Principal expended by them, and Interest thereon, and the mode prescribed by the Legislature for accomplishing that object is clearly pointed out in the 6th sec. 7 Vic., just cited, and which is the last enactment upon the subject, and forms the final agreement between the parties. At the time this Act was passed, it was quite uncertain when the event would take place upon the occurrence whereof the sum would become payable, which the Act recognized as that to which the Stockholders were entitled, and consequently no fixed amount could be named. If the Legislature had intended that the parties should only receive the Interest on their Stock up to the time at which they received their Principal, namely 1843, they ought, and no doubt would, have said so, and a specific sum which could, by a simple calculation of figures, have been easily ascertained, would have been named in the Act, and then the Stockholders would have known the precise sum they were to receive, and which, being obviously less than their Principal and Interest, they probably might have declined; and it can never be contemplated that ambiguous language was intentionally used for the purpose of inducing them to accept terms which, if they meant anything, meant more than such a limited construction would give them. It would be much more reasonable to extend the words employed to the payment of Compound Interest than to limit them to much less than Simple Interest, and as the Interest in 1843 amounted to a sum about equal to the Principal, it is as reasonable to suppose that the Legislature meant that the parties should receive Interest on the original Capital up to the year when the Tolls should amount to £45,000, as that the Interest should be calculated to 1843, and that product constituted Capital and thence forward to bear Interest; but undoubtedly, one way or the other, the parties are entitled to a sum equal to the Interest upon their Capital up to the time when the same shall be paid; and it is equally clear, that an amount paid in 1852, which was an acknowledged demand in 1843, would not be equal to that sum if postponed to the indefinite period which was ascertained in 1852. I am, therefore, of opinion, that the parties should receive Interest on their Capital, calculated up to 1852.

H. J. BOULTON.

Toronto, 27th June, 1852.

No. 11.

Quebec, 23rd April, 1853.

Sir,—I had the honor, on the 10th March last, to enclose, for the information of His Excellency the Governor General, certain printed opinions of the Attorney and Solicitor Generals of England, under the former and present Administration, as well as from certain Counsellors in the United States, procured by the Shareholders residing in the respective Countries—with the Act of 1843, and the Case on which those opinions were founded—requesting, in case a difference of opinion should exist, on the legal construction of that Act, that it might be referred to some disinterested tribunal here for their decision thereon.

The Shareholders having been advised by the highest legal authority, that their right under the Act referred to, would be recognized by any disinterested legal tribunal, they have requested me to obtain the opinion of the Government, whether they are willing to refer it, and in what manner.

I therefore beg leave to withdraw my written memorial, and the documents accompanying the same, since receiving the last Debentures, except the printed opinions last sent in, in order that the legal construction of the Act referred to

may not be rendered more complicated by referring to equitable considerations, not bearing on that particular point.

I have the honor to be, Sir,
Your obedient Servant,
WM. HAMILTON MERRITT,
Agent for the Shareholders
in the late Welland Canal Company.

The Honorable A. N. Morin,
Provincial Secretary, &c., &c., &c.

No. 12.

Quebec, May 5th, 1853.

Sir,—The right of the Shareholders in the Welland Canal Company under the Provincial Act of 1843, having been so unequivocally expressed by the different Crown Officers and Counsel, to whom the question has been referred, I feel satisfied the Executive Government will be desirous to refer its ultimate decision to a competent tribunal for adjudication, providing a precedent for such a course is pointed out.

Palmer, in his Practice on Appeals from the Colonies to the Privy Council, (Edition 1831,) page 3, states of the Privy Council that, independently of its appellate Jurisdiction, "this body also hears complaints made to His Majesty against "Governors of Colonies, and against Judges in our Foreign possessions, as well as "other public Officers holding situations at the pleasure of the Crown; and if the "Privy Council see sufficient ground they may advise the removal of such persons; "but they have no power to make reparation to injured parties by giving damages, "or to award punishment beyond that of dismissal. For such purposes, recourse "must be had to the Courts of Law." In support of this doctrine, the case of Mostyn *vs.* Fabrigas, is cited, for which see Cowper's Reports, Vol. 1, pp. 161–181. This case is important as regards Jurisdictior shewing that "every person born "within the ligeance of the King, though without the Realm,*** is entitled to sue "in the King's Courts," (p.167,) and that, "in every case, to repel the Jurisdic- "tion of the King's Court, you must show a more proper and more sufficient Ju- "risdiction; for if there is no other mode of trial, that alone will give the King's "Courts a Jurisdiction." (p. 172.)

This leads to the examination of the proper Jurisdiction for the determination of the present question, under the existing Constitution of Canada.

The Executive Council of the Province may claim a Jurisdiction to decide on the rights of the Shareholders under the Statute; yet as it is a question of compensation by the Provincial Government out of the Revenues of a Public Work, it may be urged that the Executive Council is not a sufficiently impartial tribunal.

The Attorneys and Solicitors General are the legal advisers of the Canadian Government, both of the former Members of the Provincial Cabinet, and like all Cabinet Ministers, more or less influenced by public opinion. Admitting their integrity and judgment to be unquestionable in cases where they were not a party, still an adverse decision on their part would fail to give satisfaction to opposite interests. It is therefore evident that a more disinterested tribunal should be selected to determine this case, and at any rate it is clear from an examination of the following precedents, that the Privy Council of England would give a hearing to any party who could shew a reasonable ground of dissatisfaction with the decisions of any Court, whether the law had specially provided for an Appeal from that

Court, or not. Provision for the trial of a case like the present is made by the Imperial Act 3 & 4 Will. 4, cap. 41, (passed in 1833) which confers additional powers upon the "Judicial Committee of the Privy Council," besides the decision upon Appeals from the Colonies, &c. The fourth Clause of that Act provides, "That it "shall be lawful for His Majesty to refer to the said Judicial Committee for hear- "ing or considering any such other Matter whatsoever, as His Majesty shall think "fit, and such Committee shall thereupon hear or consider the same, and shall ad- "vise His Majesty thereon."

The case of the Army of the Deccan, which occurred in 1833, soon after the enlarged jurisdiction of the Judicial Committee, under the Act 3 & 4 Will. IV., is considerably in point, (Knapp's Reports, pp. 103-160.) It arose out of claims preferred by various Officers to a share of booty captured in the Indian Wars. A Scheme for distributing this booty had been approved by the Lords of the Treasury, but some of the Officers, specially interested in this decision, memorialized the King in Council to cause it to be amended, (p. 131.)

Other Officers concerned prayed that the decision of the Treasury, (which had received His Majesty's approval) might stand confirmed; and cases were put in, signed by the Law Officers of the Crown, in answer to the memorials of the complainants, (pp. 139-140.) All these papers were referred to a Committee of Council, before whom a preliminary question was raised, whether t' emorials ought to be entertained at all.

The advocates of the Treasury scheme argued, that all booty and prize was the prerogative of the Crown, and that in making a grant thereof to individuals, the constitutional advisers of the Crown were the Lords of the Treasury. They had determined on a scheme of distribution, and it was contended their decision should not be appealed from. Counsel against the Petitioners fully admitted the right of His Majesty to submit to the consideration of His Privy Council any measure whatever wherein He might think fit to take their advice; they merely denied the right of the Petitioners to claim, as a right, the exercise of this jurisdiction in the present case, on the ground that it related to property to which the Crown was entitled by prerogative, and which had been bestowed on individuals as a matter of grace and favor. In cases affecting this description of property, the Lords of the Treasury are the constitutional advisers of the Crown, and their decision should not be impeached by another tribunal (p. 141). Furthermore, the opposing Counsel, while he admitted that their Lordships might advise His Majesty in the present case, yet contended that they could not properly give any other advice (whatever might be the merits of the individual claimants,) than that the consideration of their claims should be referred back to the Treasury (p. 155). Concurring in this view, the Committee reported that, having taken the several Memorials into consideration, and having heard Counsel thereon, and fully considered the same, they had agreed to report that it may be advisable to refer the Memorials to the Lords of the Treasury to do therein as to them may seem proper (p. 159).

See, also, the case of one Stronach, in 1838, who felt aggrieved by a decision of the Chief Justice of Grenada, under the Slavery Abolition Act 3 & 4 Will. IV. cap. 73. He petitioned His Majesty in Council for leave to appeal from the decision, but it was decided, by the Judicial Committee, that the Jurisdiction exercised by the Chief Justice was final and conclusive, under the Statute, and admitted of no Appeal; nevertheless, as there were doubts in connection with the case, (especially as to whether the Chief Justice had, properly, Jurisdiction therein,) the Committee recommended the Petitioner "to present a Petition to the Crown, through the Secretary of State, which could be referred to the Committee for their opinion, although they had no Jurisdiction in the matter as it stood." (2 Moore, P. C. Cases, pp. 311-316.)

In the case of D'Orliac, who, in 1844, complained of a Decree of the Supreme Court of the Mauritius, in a Divorce matter, it was decided that the Charter of that Island gave no right of Appeal to the Queen in Council in such cases. Nevertheless, it was declared by the Judicial Committee, that the Crown could (under the general powers reserved to it by the Charter), upon a special memorial, grant leave for an Appeal against the obnoxious decision. (4 Moore, p. 376.) In the subsequent case of Shire, complaining of a decree of the same Court, in a similar matter, it was admitted that the parties had no legal right of Appeal; nevertheless, on a special Petition being presented, the Appeal was allowed and adjudicated upon. (5 Moore, p. 82.)

Again, on an occasion in 1847, wherein certain parties were aggrieved by a Judgment of the Supreme Court at New South Wales, although no power had been given by the Charter of Justice, or by the Act of Parliament constituting the said Court, to allow an Appeal therefrom to the Queen in Council; yet, "to pre-" vent a failure of Justice," the Judicial Committee agreed, upon a special Petition to that effect being presented to the Queen, and referred to their consideration, that they would admit an Appeal to be entertained from the Judgment of the said Supreme Court (6 Moore, pp. 153, 168). In addition to these precedents, it appears by the Sessional Papers of the House of Commons in 1850, Vol. 38, pp. 31, 43, that in July of the same year, the Commons pray Her Majesty would be pleased to direct that such means as to Her Majesty shall seem most fitting and effectual, be taken to ascertain the legality of the Powers of the Hudson's Bay Company, under their Charter, issued in the year 1670.

On the 5th July, Earl Grey requests the Attorney General in conjunction with the Solicitor General, to inform him, if the rights claimed by the Hudson Bay Company properly belong to them; if a doubt on any point exists, to advise His Lordship in what manner the opinion of a competent tribunal may best be obtained on the subject.

In January, 1850, Sir John Jervis and Sir John Romilly, the Attorney and Solicitor Generals, addressed Earl Grey in reply as follows:—

We are of opinion that the Claims of the Company do properly belong to them; upon this subject we have no doubt; but as it will be more satisfactory to the parties, if the questions were publicly argued and solemnly decided, we humbly advise Your Lordship to refer these questions to a competent tribunal for consideration and decision. The Judicial Committee, under the fourth Section of the Statute, 3 & 4 Will. IV. cap. 41, from its constitution, is the best fitted for the discussion of a case of this description, and we recommend that to that tribunal the proposed Petition should be referred. The proper mode of raising the question for discussion, will, we presume, be for Mr. Isbister or some other person to embody in a Petition to Her Majesty the complaints urged against the Hudson's Bay Company, and such a Petition may be referred by Her Majesty to the said Judicial Committee.

On the 29th January, Mr. Hawes writes Mr. Isbister, to request him to determine whether he wished to prosecute the complaint in the manner pointed out by the Attorney and Solicitor Generals.

These Cases, it is submitted, fully substantiate the constitutional right of the subject to Appeal, in every instance where redress is sought for injuries received or wrongs sustained, to the Queen in Council; and they as clearly shew that Her Majesty will not be debarred from affording relief by any mere technical considerations, or alleged defect in jurisdiction, and that where such defects or omissions may exist, the Judicial Committee is still ready and willing to afford relief.

If, after fully weighing the matter, the Honorable the Executive Council still hesitate in awarding to the Shareholders of the late Welland Canal Company the compensation they claim upon the legal construction of the 7th Vic. cap. 34, I

would most respectfully suggest that the Government (in conformity with the foregoing precedents) will sanction the reference of the case to a competent legal tribunal here, or to the Judicial Committee of the Privy Council in England, in order to afford opportunity for a full, public and impartial investigation, and decision of the rights of the respective parties.

I have the honor to be, Sir,
Your obedient Servant,

WM. HAMILTON MERRITT.

To the Hon. W. B. Richards,
Attorney General for Western Canada.

No. 13.

Quebec, 6th June, 1853.

Sir,—I have not yet received a reply to the application I had the honor to present in the early part of March, in behalf of the Welland Canal Shareholders, to refer the legal construction of the Act of 1843, to the decision of the Judicial Committee of the Privy Council. If it receives the approbation of the Council, I will leave the Petition to the Queen, to be made by the English Shareholders, and leave the matter to their management. Your will, therefore, oblige me by communicating the decision of the Council thereto.

I have the honor to be, Sir,
Your obedient Servant,

WM. HAMILTON MERRITT.

To the Honorable the Provincial Secretary,
&c., &c., &c.

No. 14.

Secretary's Office, 9th June, 1853.

Sir,—I have the honor to acknowledge the receipt of your letter of the 6th instant, requesting a reply to your communication of the 5th March last, on behalf of the Private Stockholders of the Welland Canal, and to acquaint you, that the subject is still under the consideration of His Excellency the Governor General in Council.

I have, &c.,

A. N. MORIN.

The Hon. W. H. Merritt, M.P.P.

No. 15.

MEMORANDUM

Upon Mr. MERRITT'S APPLICATION on the part of the late PRIVATE SHAREHOLDERS in the WELLAND CANAL.

The Private Shareholders represented by Mr. Merritt, in their Memorial contend, that under the Act of 1843, (7 Vic. cap. 34,) they are entitled to claim six per cent. per annum, upon the amount of their paid up Stock, from the time the same was paid in until the year 1852, when the revenue of the Canal reached Forty-five thousand pounds, notwithstanding that the Principal was paid off, by Debentures bearing six per cent Interest, dated the first day of January, One thousand eight hundred and forty-three; they also submit the legal opinions of several eminent professional gentlemen both of England and the United States in support of their claim.

It appears from a statement made by the Deputy Inspector General, that the sum of £107,373 4s. 1d., being the back Interest at six per cent. on £117,800 (the paid up Stock) to the first of January, 1843, has been paid to the Private Shareholders in full, and the amount they yet claim is £65,113 3s. 4d., being Interest at six per cent. on the same amount from the first of January, 1843, (the date from which the Debentures issued to pay off the Principal bear Interest,) to 1852, when the Tolls amounted to £45,000, as mentioned above. This claim, it admitted, would entitle the Shareholders to receive twelve per cent. during that period, the legal rate of Interest during the whole period having been six per cent. per annum, and no more. (*Vide* 4 & 5 Vic. cap. 48, and 7 Vic. cap. 34, *infra*, Appendices K. & L.)

The preamble of the Act of 1843, recites at unusual length the provisions of the Act of 1841, which sets forth, that the object of that Act was to place the Canal under the exclusive control of the Government, and for that purpose to purchase the Stock of the Private Shareholders, amounting to One hundred and seventeen thousand eight hundred pounds, on account of the Province, by the issue of twenty year Debentures to the Private Shareholders for the amount required, bearing Interest at two per cent. for the first two years, three per cent. for the third year, four per cent. for the fourth year, five per cent. for the fifth year, and six per cent. for the sixth and following years; and that whenever the Tolls collected on the Canal should annually amount to thirty thousand pounds, other Debentures bearing six per cent. to issue to the Stockholders, for such sums as would make up six per cent. interest, upon the amount of Stock paid in by them from the time the same had been actually paid.

Under the repealed Act of 1841, Debentures were to be issued to the Stockholders to the amount of the principal monies paid on their respective Stocks bearing the lower rates of interest until the sixth year when the legal rate of six per cent. commenced, and so soon as the Tolls reached thirty thousand pounds then other Debentures would be issued to them, for an amount equal to six per cent. interest on such principal monies from the time the same was paid in.

The Private Stockholders state in their Memorial, that the Debentures issued under the Act of 1841, having proved unsaleable by reason of bearing a less rate of interest than six per cent., the Act of 1843 was passed to obviate the difficulty, by the issue of marketable Debentures bearing "full interest," and to use the words of the Memorial, "inasmuch as it did not increase the amount of interest to be "paid from the Provincial Revenue, at the same time it secured for the Share-"holders the value of their capital." There is nothing in the Acts of 1841, or 1843, indicating that the Legislature intended to allow the Shareholders more than

six per cent. simple interest. If it was intended to give the Shareholders twelve per cent. for a definite or indefinite period, or compound interest by making a rest, or compensation, or any amount beyond six per cent. simple interest, the Legislature would have, either by recital or express words, defined such an important and extraordinary concession or right. In the Memorial and other documents accompanying the same, much stress is laid on the sixth clause of the Act of 1843, and it is contended: That in effect, it authorises twelve per cent. to be paid on the amount of the Private Stock from and after the first day of January, 1843, so soon as the revenues of the Canal amounted to £45,000. That the words "amount, equal to six per centum per annum," should be construed to mean, not a rate of interest, but an indemnification or compensation to the Shareholders, and that the period to which the six per cent should be calculated upon the amount of Principal Stock, is the year in which the Tolls amounted to £45,000, (1852,) although such Principal Stock was paid off on the first January, 1843.

Upon reference to the Statute, *(vide infra,* Appendix L.) it will be seen that the Second clause charges the amount of the Private Stock £117,800 upon the consolidated fund, with interest from the first of January, 1843, for the benefit of the Shareholders; the Third clause authorises debentures to issue to them bearing interest from that date, the Sixth clause enacts that after the Tolls shall reach £45,000, the consolidated fund shall again be charged "with an amount equal to six per "centum per annum on the Private Stock subscribed from the time the same has "been paid in."

If the sixth clause stood alone, and nothing in the Act shewed that the Principal was to be paid off as from January, 1843, it might be contended that six per cent. was payable to the year 1852, but when we find by the third and seventh clauses, that provision was made for the payment of the Principal in 1843, and which in pursuance of the Act was paid—it is an unreasonable and forced construction of the provisions of the Statute to suppose Interest chargeable on an amount already paid or bearing Interest; on the other hand it is reasonable to assume that the Legislature intended the sixth clause to read "from the time the same has been paid in" to the time of the payment of the Principal, viz.: the first of January, 1843.

The Seventh clause authorises debentures to issue for the amount of the Private Stockholders' "claims," and in using this term the framer of the Act evidently had in view the back interest, and that the Stockholders had debentures issued to them under the Act of 1841, bearing the low rates of interest as stated in the fifth clause of the Act of 1843, and who had only received two per cent. for these years. The eighth clause refers to the back interest.

It has been decided by some of the ablest Judges of England, that the intent of the Legislature is not to be collected from any particular expression, or clause, or section, but from a general view of the whole of an Act of Parliament; and if the words are ambiguous, the whole context must be looked to for their explanation—and it is no less a rule of law "that the words of a Statute are to be taken in their "ordinary and familiar signification and import, and regard is to be had to their "general and popular use." If upon examination of the whole Statute of 1843, it is still contended an ambiguity exists, the following doctrine will be generally admitted as correct. That when a Statute is passed for the benefit of a Canal, Railway or other Company, it is a bargain between a Company of adventurers and the public, the terms of which are expressed and set forth in the Statute, and the rule of construction in all such cases is fully established to be, that any ambiguity in the Laws of the contract would operate against the adventurers and in favor of the public, the former being entitled to claim nothing which is not clearly given by the Act. It has also been judicially held, that the whole system of Legislation upon the same subject matter may be taken into consideration in order to aid in the construction of a Statute, and that it is the duty of Judges in order to discover the true

meaning of an Act to consider other Statutes in *pari materia*, whether they are repealed or unrepealed. An able commentator says that every obscure or doubtful passage is to be explained according to the intention of the parties, and this we must endeavor to ascertain from the words, the usage of language, and also from the respective circumstances and relation of the parties to the transaction.

On reference to the antecedent legislation on the subject, it appears that in March, 1839, (Appendix to Upper Canada Journals 1839 & 1840, Vol. 1, pt. 2, page 13**) the Private Shareholders petitioned the Legislature of Upper Canada to purchase their Stock in the Canal; in the month of May following the two House of Parliament passed a Bill (*vide infra*, Appendix C,) authorizing, for the purchase of the Stock, twenty year Debentures to issue to the amount of the principal £117,800 bearing two per cent. for two years, and three, four and five per cent. respectively for the following years, and six per cent. for the remainder, (*vide infra*, Appendix A,) and with regard to the back interest, the second clause enacted, "That whenever the Tolls collected on the said Canal shall annually amount to the "sum of £30,000, it shall be lawful for the Lieutenant Governor to authorize and "direct the Receiver General of the Province to issue other Debentures to the "original Stockholders or their legal representatives for such sum as will make up "six per cent. interest upon the amount of Stock by him subscribed and paid for "from the time the same shall have been actually paid in *up to the time of the issuing "of the Debentures in the first Clause of this Act mentioned*, which Debentures shall "be made payable in twenty years from the date thereof, and bear interest at the "rate of six per cent., payable half yearly out of the Public Revenue of the Pro-"vince." Mr. Merritt appended to the Annual Report on the Canal for the year 1841, (*vide* Appendix D, to Journals for 1841, Letter I,) his and Mr. Keefer's opinion on this Clause in these words:—"There appears also an ambiguity in the "wording of the second Clause of the Act, 16th May, 1839, by which the interests "of the Private Shareholders may be effected to avoid all mis-apprehension on this "subject in future, the undersigned will present a memorial to the next Legislature, "on behalf of the Private Shareholders, praying the Act to be amended in such "manner as to insure to them the full amount of *interest on their investment from "the period when paid in, down to the time the transfer shall be made*, by which "the true intent and meaning of this Act will be carried into effect." This Bill clearly shews that the intention of the Legislature was to carry into effect the principle and spirit of Mr. Merritt's proposal hereinafter mentioned.

The effect of the words in italics in the clause as above quoted was such that the back Interest being merely computable to the time of the issue of these Debentures, the Shareholders would lose the difference between the lower rates of Interest and six per cent. for the first five years on the Debentures issued for the Principal of £117,800. Consequently, in the Act of 1841, as it was undoubtedly the intention of the parties to make up the Interest to six per cent. per annum, for those years when the back Interest should be paid, the words above quoted in italics were omitted in that Act. It is probable this was done at Mr. Merritt's suggestion, as intimated in the annual Report above quoted from.

The Debentures issued under the Sixth Section of this latter Act (1841,) being found unsaleable, the Shareholders brought the subject of its amendment before the Government, not for the purpose of making a new demand, but solely to enable them to sell their Debentures. Mr. Secretary Rawson drew up a memorandum for the information of the Executive Government, (*vide infra*, Appendix B.) under date of the twenty-first September, 1842, and he suggested a doubt as to whether the omission of the words "annual," or "per annum," as applied to Interest in the sixth clause, did not nullify its provisions. This suggestion no doubt was considered by the framer of the Act of 1843, and the word "interest," omitted, and "per annum," inserted, to avoid the difficulty suggested in that Section of the Act of 1841.

The circumstances above detailed under which these three Bills were introduced from time to time, and passed, clearly shew, that the original proposition of Mr. Merritt was the basis of all the legislation, and the different amendments made were introduced to carry out his views, and to set at rest all doubts as to the intention of the Government and the Legislature. The last proceeding of the Assembly, on the twentieth November, 1843, (Journals of Assembly for 1843, page 142; *vide infra*, Appendix J.) previous to the presentation of the Bill of that year to the House, for its first reading, was the necessary resolution of a Committee of the whole House who resolved on that day relative to the back interest, "And further to provide "that so soon after the completion of the Canal as the toll shall amount in any one "year to £45,000 currency, other Debentures shall be issued to the private Stock-"holders for the *interest on their stock for the time the said had been paid in.*" Upon this resolution the Bill of 1843 was introduced, passed its various stages without amendment, and received the Royal Assent.

As the Statute itself is a mere agreement between the Province and the Shareholders, relative to the purchase of their Stock, it will not be violating any rule of justice or equity to enquire further into and examine the circumstances and grounds upon which the bargain was arranged, for the purpose of ascertaining whether that which the Shareholders now demand, formed part of the arrangement. Upon reference to the records of the Assembly, (Appendix to Journals of U. C. Assembly 1839 & 1840, Vol. 1, pt. 2, page 13 * *.) it will appear, that a Committee was appointed to consider a Message from the Governor General on the subject of the Act authorizing the purchase of the Private Stock, and appended to the Report of that Committee are several documents (*inter alia*) a memorial of the President of the Company (Mr. Merritt) and the Directors intimating their desire to dispose of the private Stock, also, a report of a former Committee of the House on the subject of the memorial, who "having applied themselves to the consideration of such "proposition to be made to the Stockholders, as would combine the principle of "ultimate indemnification to them with a due regard to the interest and conve-"nience of the public"—recommended, if the Stockholders would agree to transfer their Stock, that twenty year Debentures should issue to them for the purchase thereof, bearing Interest at the rates of three, four and five per cent. for the first three years respectively, and six per cent. afterwards until redeemed, and that so soon as the annual receipts of the Canal reached twenty-five thousand pounds, three per cent. per annum upon the amount invested should be paid to the Shareholders, and when the annual revenues of the Canal reached £50,000, six per cent. per annum upon their former Stock should be paid until the legal rate of Interest upon the Capital invested by them, from the time it shall have been actually paid in, shall be fully paid.

The President (Mr. Merritt,) was examined by the Committee and in his evidence appended to the Report, in reply to the question (*vide* Journals of U. Canada, 1839 and 1840, Vol. 1, pt. 2, pages 14 * * 15 * *)—"In the event of the "Stock being purchased, from what time would the Interest commence?" He answered, he computed the Interest to the best of his recollection to that date at £55,008, setting out his data, and computing at the rate of six per cent. simple Interest. And in reply to the question:—"Do you think the terms proposed by the "Committee (viz.: the proposition above,) equitable towards the Stockholders?" He answered,—he did not, and made a proposition in lieu thereof, (*vide infra*, Appendix C.) which he stated he should much prefer as being more advantageous to the Stockholders, viz.:—twenty year six per cent. Debentures to the amount of one-half of the whole Private Stock (£58,900) to be issued at once to the Shareholders. Three years after, like Debentures to issue for one-fourth (£29,450), and six years thereafter the remaining one-fourth to issue, in all £117,800, total amount of Principal. That after the annual re-

venue of the Canal reached £25,000, like Debentures to issue to the Shareholders to the amount of one half of the Interest due on the Stock since it was paid in to the time of the issue of the first Debentures on account of the Principal, and computed by him as above at £27,504. And after the income amounted annually to £50,000, like Debentures to issue for the remaining half due on the then "back interest," £27,504. "So that the Stockholders would ultimately be paid the Principal and Interest of their investments without burdening the revenue of the Province." And in order to convince the Committee of the equity of the proposition, and that no loss would fall on the Province, and to avoid any doubt or ambiguity, Mr. Merritt set out elaborately his then supposed prospective financial position of the Canal for a period of thirteen years, shewing the working of his proposition, and that the first instalment of back Interest would become payable in 1845, the last in 1849.

To put it more clearly, his proposal was as follows, viz. :—

		£	s.	d.
	Amount of principal	117800	0	0
1837..	Amount of interest then due by Mr. Merritt's calculation	55008	0	0
	Total amount to be paid £	182808	0	0

MODE OF PAYMENT.

(See Journals of U. C. Assembly 1839 & 1840, Vol. 1, pages 14 * *, and *infra*, Appendix C.)

		£	s.	d.
1837..	Debentures to issue for half of principal	58900	0	0
1840..	Debentures to issue being one-fourth of principal	29450	0	0
1845..	Tolls supposed to reach £25,000. Debentures for half of computed interest to issue.—(N.B. eight years have elapsed, and no additional interest or back interest included or claimed)	27504	0	0
1846..	Debentures to issue for remaining one-fourth of principal	29450	0	0
1849..	Tolls supposed to reach £50,000. Debentures to issue for remaining half of interest.—(N.B. twelve years elapsed, and no interest or back interest included or claimed)	27504	0	0
	Claim and interest as above in full £	182808	0	0

In this proposition, which Mr. Merritt on the part of the Shareholders no doubt well considered, no demand is made for Interest on the back Interest or Interest on the Principal after it was paid off, or for other compensation, but Interest is merely computed to the time of the transfer of the Stock, and the then ascertained amount, viz.: £55,008, without any addition, is to be paid when the Tolls on the Canal reach the respective amounts at which it is payable.

At the time the application was made to dispose of the Private Stock, the Company was much embarrassed, and the Stock consequently unsaleable; under such circumstances after payment in full of the Principal invested, the only claim the Stockholders had, was upon the generosity of the Legislature, on account of the benefits the Province would reap eventually from the Canal, and it was very wisely considered that the least objectionable mode of preferring any claim, beyond that of the amount paid up, would be in the shape of back Interest upon the amount of investments from the time of actual payment until the principal was paid off, payable when the revenues of the Canal reached a certain amount,—such was the proposition of Mr. Merritt on the part of the Shareholders. These matters are noticed

because they clearly shew that no indemnification or compensation was demanded by the Shareholders when the matter was before the Legislature, other than the principal monies and back Interest, and that the only point for consideration was the period when the amount of the back Interest should become payable. The records of the Executive Council Office contain evidence to the like effect. Mr. Merritt in his letter of the first September, 1842, (*vide infra*, Appendix D,) relating to this subject, speaks of waiting for the back Interest until the revenues reach certain amounts. A draft of a Bill in Mr. Merritt's hand-writing, sent for the information of the Government amending the Act of 1841, (*vide infra*, Appendix G,) provides in its fourth clause that the Debentures mentioned in the second clause of the Act of 1841 were to issue without any alteration as to terms except being issued payable in London at five per cent. if desired, consequently the amount to be issued was to make up six per cent. Interest upon the amount of Stock from the time the same was paid in. The minute or memorandum of Council of twentieth of May, 1843, (*vide infra*, Appendix I,) says, after stating at length the case, and the desire of the Shareholders for a repeal of the Act of 1841, "It is therefore "not thought expedient to move in the amendment of the Law, as proposed by Mr. "Merritt, unless the issue of Debentures for the payment of back Interest shall be "postponed until after the completion of the Canal, and until the tolls of one year "shall amount to £45,000, currency." Mr. Merritt in his letter of twenty-second September, 1843, (*vide infra*, Appendix F.) transmits the memorial of the Stockholders, dated twenty-second July, of the same year, accepting the proposal contained in the memorandum, and thereupon the Act of 1843 was founded.

It is urged on behalf of the Shareholders that a liberal construction should be given to the Act so as to favor their claim, inasmuch as the improvement undertaken by them has been of vast service to the country, and therefore on equitable grounds they should meet with the most favorable consideration. In that point of view a reference to the contents of a Despatch, (*vide infra*, Appendix H.) dated 9th July, 1842, from His Excellency the late Sir Charles Bagot, to the Colonial Secretary Lord Stanley, is sufficient to shew the then opinion of the Government —and that no claim can be properly founded upon such grounds; nothing has occurred, since the date of that Despatch, to place their claims on a more favorable footing.

With regard to the opinions of several eminent professional men obtained by Mr. Merritt, it is remarkable that while some of these Gentlemen strain the sixth clause of the Statute of 1843, to shew that the words "six per centum per annum" may be construed to mean not interest but a mode of computing part of the purchase money of the Stock, and in order to arrive at such a conclusion travel out of the Statute and assume the intention of the Legislature to have been the very contrary of what in fact it was—yet Mr. Merritt and the Shareholders on every occasion speak of the six per cent. as Back Interest—the opinions of the other Gentlemen are apparently predicated solely on the words of the sixth clause itself; it is not denied that the Shareholders were entitled to six per cent. (interest which they now receive) from the time the Stock was paid in to the time the tolls reached £45,000.

The whole circumstances of the claim—the inability of the Shareholders to complete the Canal—the depreciation of the Stock—its proposed sale to the Government—the proposition relative to the mode and period of payment of the back Interest—the various Bills introduced in and passed by the Legislature, and the reason of their introduction—the documents, letters, memorials, and other papers relating to the subject—the Statute of 1843 itself, all conclusively and most satisfactorily shew, that at no time did the Private Shareholders expect, ask or stipulate for, the claims they now make, and that neither in Law or Equity are they entitled to them.

Since the foregoing Memorandum was prepared, Mr. Merritt has requested that the rights of the Stockholders may be considered in relation to the Statute and not as regards the equitable grounds put forth in his former Memorials: And in the event of the Council being of opinion that the Stockholders are not entitled to the amount claimed by them, that the question should be referred to some legal tribunal, either in this Country or in England, for decision.

The observations already made will apply to the legal consideration of the subject, and it is submitted that there is nothing in the nature of the claim to justify a departure from the ordinary rules prescribed by the Government in this Country when demands of a like nature are presented.

Appendix A.

ACT OF 1839.

Whereas it is desirable to place under the exclusive control of the Government of this Province the Welland Canal, and for that purpose to provide for the purchase from the Private Stockholders in that work the Stock by them held and which amounts to the sum of One hundred and seventeen thousand eight hundred pounds. Be it therefore enacted, &c., That from and after the passing of this Act, it shall and may be lawful for Her Majesty's Receiver General upon an order to that effect from the Lieutenant Governor of this Province to issue such number of Debentures as may be required to the several Stockholders in the Welland Canal for the amount equal to the Stock held by him or them, which Debentures shall be made redeemable in twenty years from their date, and shall bear an Interest of two per cent. per annum on the amount for which they may be issued, for the first two years, three per cent. for the third year, four per cent. for the fourth year, five per cent. for the fifth year, and six per cent. for the sixth and following years, and which Interest, as well as the principal sum, shall be chargeable upon and payable out of the public Revenues of the Province.

2. And be it, &c.—That whenever the Tolls collected on the said Canal shall annually amount to the sum of Thirty thousand pounds, it shall be lawful for the Lieutenant Governor to authorize and direct the Receiver General of the Province tc issue other Debentures to the original Stockholders, or their legal representatives for such sum as will make up six per cent. Interest upon the amount of Stock by him subscribed and paid for from the time the same shall have been actually paid in up to the time of the issuing of the Debentures in the first clause of this Act mentioned, which Debentures shall be made payable in twenty years from the date thereof, and bear Interest at the rate of six per cent. payable half-yearly out of the Public Revenues of the Province.

3. Provided always, And be it, &c.—That nothing herein contained shall be construed to compel any Stockholder to accept Debentures for the Stock by him held as aforesaid, or in case of refusal to take the same to deprive him from being paid from the Tolls and Revenues of the said Canal according to the laws now existing having relation to the said Canal.

4. And be it, &c.—That so soon as the Stockholders owning two-thirds of the Stock in the said Canal shall have signified their acceptance of Debentures in lieu of Stock as hereinbefore provided, so much of the eighth clause of an Act passed in the 7th year of the Reign of His late Majesty King William IV., intituled, "An Act for the permanent completion of the Welland Canal, and for other purposes therein mentioned," as authorizes the annual election of two Directors by the Private Stockholders of the said Welland Canal Company, and as requires the

election or appointment of more than three Directors for the management of the said Stock, Property, Affairs and Concerns of the said Welland Canal Company, be, and the same is hereby repealed, and that a majority of the three Directors shall be a Quorum for the transaction of business; Provided always, That the Lieutenant Governor shall have power and authority to appoint such Directors, or any of them, annually at his discretion.

ALLAN N. MACNAB,
Speaker.

COMMONS HOUSE OF ASSEMBLY,
6th day of May, 1839.

JONAS JONES,
Speaker.

LEGISLATIVE COUNCIL CHAMBER,
9th day of May, 1839.

Appendix B.

Memorandum of 21st September, 1842, upon Mr. Merritt's Application on the part of the Private Shareholders in the Welland Canal.

Mr. Merritt, in his letter of the 20th August, solicits that the Government will consent to the introduction of a Bill to annul the first section of the Act of last Session relating to the Welland Canal Stock held by private parties, under which the Debentures to be given in lieu of that Stock are to bear Interest, for the first two years at two per cent., for the third at three per cent., for the fourth at four, for the fifth at five, and for all subsequent years at six per cent., until the expiration and redemption of the Debentures in twenty years.

He proposes to substitute for these Debentures others bearing immediately six per cent. Interest, justifying the request on the ground that as by the second section of the same Act, the Shareholders will be entitled to Interest at that rate, for the past as well as the future, when the Tolls collected on the Canal shall amount to £30,000, which sum, he asserts, they will be sure to reach next year, the Province will lose a mere trifle by the arrangement, as will be presently shown, and the Shareholders will be greatly benefitted by their Debentures becoming saleable, which he states they are not at present.

His position is that the Interest for one year at two per cent. becomes due in November, 1842, that a similar payment at the same rate will become due in November, 1843, making together four per cent. up to the latter date.

In 1844 he asserts that the rate, instead of being 3 per cent. under the first section, will be 6 per cent. under the second: if therefore the Province were to pay 6 per cent. in 1843, it would only lose the difference between that amount and 4 per cent. due in November, with the small amount accruing at 3 per cent. during the rest of the year.

In return for this he offers, on the part of the Shareholders, to forego a claim which they have put forward for arrears of interest under an Act of 1837, which, at the rate of 6 per cent., to which they consider themselves entitled, would amount to 36 per cent. on the Capital; or if that claim be rejected, to an arrear of 25 per cent. under the same enactment.

It will be necessary to enter into a little detail to show the position in which the parties and the Province stand under this Act.

By the 1st section the Shareholders are entitled to Debentures for £117,800, redeemable in 20 years. The cost of this to the Province will be :—

	£	s.	d.
Interest—1st year at 2 per cent.	2346	0	0
2nd do 2 do	2346	0	0
3rd do 3 do	3534	0	0
4th do 4 do	4692	0	0
5th do 5 do	5880	0	0
6th do 6 do	7068	0	0
14 subsequent years at do	98952	0	0
Capital	117800	0	0
Total £	242618	0	0

If the capital were raised at 5 per cent. and the parties paid off, the interest would amount in 20 years only to £117,800, instead of £124,818, a saving of £7,000, and the capital might be repaid sooner and the interest saved.

But by the 2nd section when the "Tolls collected on the Canal shall annually "amount to the sum of £30,000," other Debentures are to be issued "for such sums "as will make up 6 per centum interest upon the amount of Stock subscribed and paid for, from the time the same shall have been actually paid in" which Debentures are to bear interest at 6 per cent. for 20 years.

Upon this it must be observed—First, that this new debt is to be created when the Tolls collected amount to £30,000, without any reference to the net income :—*i. e.* the Shareholders are to be paid out of the Tolls, and the Government is to defray the charges of maintenance.

Secondly—The Debentures are to be issued "whenever" the Toll "shall annu-"ally amount" to £30,000; no provision therefore is made for the case of the annual receipt falling below that sum, after it has once reached it. If by any accident the Canal were to be stopped, or the trade be diverted from it, after the Tolls had once reached the above amount, the Government will still be liable to the charge, although receiving no benefit from the Canal.

Thirdly—There is an important verbal omission in the section, although it may not invalidate its intended effect. It is enacted that the Debentures shall be issued "for such sums as will make up 6 per cent interest upon the Stock, from the time "the same shall have been actually paid in." The word "annual" or "per annum "applied to interest," are omitted; and the doubt may arise whether, although the intention of the framer is obvious, the omission does not nullify the clause.

Passing over, however, these objections, and supposing, as Mr. Merritt states, that the Tolls to be collected next year will amount to £30,000, the parties will receive under this clause as follows :—

The precise time at which they paid the money can only be stated after reference to the original Stock Books, but Mr. Merritt believes it to have been thus paid :—

£30,000	in	1825.
45,000	"	1828.
42,800	"	1830.

Hence, the sum to which the parties will be entitled at 6 per cent. annually, will amount on,

£30,000, for 17 years,	30,600
45,000, " 14 "	37,800
42,800, " 12 "	30,816
Total	£109,216

For this sum of £109,216, Debentures are to be issued to the parties, upon which they will be entitled to 6 per cent. for 20 years, amounting to £131,040, besides the new capital, making together £240,256, in addition to the £242,618 payable under the first section.

This may be shown in abstract:—

	£	s.	d.
Original Debentures, Capital	117800	0	0
Interest	124818	0	0
£	242618	0	0
New Debentures, Capital	109216	0	0
Interest	181040	0	0
£	240256	0	0
Total £	482874	0	0

Thus, nearly half a million of money will be expended to get rid of this Stock, amounting to £117,800!

The parties however are not satisfied with this. They claim, under the 17th section of 7th Will. 4, cap. 92, a still further sum. The clause runs thus: Be it enacted, &c., "that the Tolls received upon the canal, after deducting the amount "required for the charges now made thereon by law, or so much thereof as shall "be necessary, shall be first annually applied to discharge the interest which will "accrue upon the said sum of £245,000" (to be advanced for the works under this Act) "and the remainder of the income received by the said Company shall be di-"vided among the private Stockholders until it shall equal six per cent on the "amount of their investments."

Upon this, they first ground a claim for the full arrears of interest at six per cent per annum. This for six years, to 1842, would amount to £42,408.

If this be disallowed, they claim a less amount of arrears, equal to twenty-five per cent for the whole period of six years. This would amount to £29,450.

The foundation of these claims rests upon the assumption that the income referred to in the clause last cited was gross income, excluding in the first case a deduction even for the cost of administration, and admitting it in the second. This interpretation has been repudiated by the Government; Mr. Attorney General Hagerman gave an opinion against it, but the Company obtained the opinion of five lawyers in favor of it. To concede it would be to admit that these parties in a private speculation would be reaping a large profit or rate of interest, while the Canal did not pay its expenses, and that the maintenance of the works was to be thrown on the Government.

Without, however, determining this question, it is clear that when the parties under the second section of the Act of last Session, get arrears of interest at the rate of six per cent, for these very years, they are not entitled to another six or five per cent, which would raise the interest for this period to eleven or twelve per cent, and Mr. Merritt himself admits that such "was not the intention of the law" of last Session.

If therefore this claim falls to the ground, there is no reason why the Legislature should shew them any further favor, and upon the chance, however probable, of the tolls amounting next year to the required sum, subject the Province, to the additional payment of two per cent for one year, with three per cent in the following year, and further payments, if the tolls do not increase as is expected.

But it would seem, further, that Mr. Merritt misinterprets the operation of the second section of the Act of last Session, in relation to the first.

The first section grants debentures bearing a sliding scale of interest in future years. The second enacts that at a certain time further debentures shall be given for arrears of interest accrued up to the time at which such debentures are issued. It does not provide for anticipating the payments in future years under the first section, and adding to the new Debentures the difference between six per cent, and the lower rates fixed by that section.

If this interpretation be correct, Mr. Merritt's other ground for his application would be removed.

A few words, before concluding, as to the position and claims of the Province with respect to the Welland Canal. It has already expended more than £380,000 upon this work, of which sum a large portion has been borrowed, upon debentures bearing five or six per cent, for which interest it still remains liable, a further sum of £450,000 is now to be expended. The annual interest upon this and the portion of the previous expenditure remaining unredeemed, say £350,000, will be, at five per cent, £40,000. This alone will absorb the probable amount of Tolls, for some years to come, making no allowance for :

1st. The expenses of maintenance, cost of repairs, &c.

2nd. The payment of the sum of £482,874 to the Private Shareholders.

3rd. The repayment of the principal £800,000, which will be obligatory as regards a great part of that sum within twenty years.

The parties urge their claim upon the gratitude of the Province for having commenced this work, and having thereby conferred the most important benefits upon the country. The well-known circumstances under which the works have been provided for and carried on, tend very much to diminish the force of their appeal, as it may well be doubted whether, if the Canal had not been commenced by private individuals, the obvious utility and need of such a communication between the Lakes, would not have soon attracted the attention of the Legislature and the Government, by whom it is probable that the work would have been completed with much more expedition and economy, and with a greater regard to public interest than could possibly be the case in a private speculation of this nature.

In a subsequent note of 10th September, Mr. Merritt states that his " object at " present is to ascertain on what principle the parties are to be renumerated," and also " that they would accept either Debentures or money " for the amount to which they are entitled under the second section.

21st September, 1842.

Appendix C.

MR. MERRITT'S EVIDENCE.

—

(See Appendix to Journals of U. Canada, Sess. of 1839-40, Vol. 1, Part 2, page 14 * *. Rep. Sel. Com. Welland Canal.)

—

At what time was the investment made by the private stockholders, and in the event of their stock being purchased by the Province, from what time will the interest commence ?

I cannot state the precise time when each person subscribed without reference to the original stock books, but from recollection believe the interest may be computed as follows:

1825	10 years	6 per cent on	£30,000 *a* 1800	.....	£18,000
1828	8 "	"	45,000 *a* 2700	.....	21,600
1830	6 "	"	42,800 *a* 2568	.....	15,408
					£55,008

Do you think the terms proposed by the Committee equitable towards the Stockholders?

ANSWER.—I do not—Many of them have been paying interest at the rate of 7 per cent. per year on the amount of their investment; to their judgment, energy and confidence, are the public indebted for the undertaking, they have sustained at their hazard and have derived no benefit whatever when the public have derived far greater benefits than the entire cost of the Work. At the same time I feel so confident the income from the Canal will repay them in a short time, that I should much prefer the following arrangement to enable the Stockholders to realize a part of the outlay at once, and not create so large and apparent debt as the first measure shows.

—

PROPOSITION.

To issue Debentures payable in 20 years for 50 per cent. on the par value of the Stock held by individuals, which will amount to £58,900
In three years hence to issue Debentures as above for 25 per cent 29,450
In six years same as above..... 29,450
£117,800

After the Revenue on the Canal amounts to the yearly income of £25,000 to advance the Debentures to the amount of one half of the interest due on the Shares since the Stock was paid in, payable out of the proceeds of the Canal, after the income amounts annually to the sum of £50,000 to issue Debentures as above for the remaining half due on the back interest payable out of the proceeds of the Canal, so that the Stockholders will ultimately be paid the principal and interest of their investment without burdening the revenue of the Province.

Should the private Stock be surrendered as proposed, will the public be called upon to pay the interest?

ANSWER.—I do not think the Revenues of the Province will be burdened with one farthing by extending their credit in supporting that work with judicious management.

For instance, if the Government should issue Debentures payable in twenty years for fifty per cent. on the amount of the Private Stock.

	£	s.	d.
In 1837, £58,900 @ 6 per cent., the Interest	3534	0	0
£41,100 @ 6 per cent., for payment of Debts, Repairs, and commencement of Stone Locks	2466	0	0
The Tolls of this Year will pay the Interest. £	6000	0	0
In 1838, Interest on £100,000	6000	0	0
£25,000 advanced on Locks	1500	0	0
Will amount to..... £	7500	0	0
The Tolls of this year will also meet the interest.			

	£	s.	d.
In 1839, Interest on Stock and Loan, £125,000	7500	0	0
Advance on Locks, £25,000	1500	0	0
The increase Toll will also meet this Amount.			
£	9000	0	0
In 1840, Interest on Stock and Loan £150,000	9000	0	0
Advance on Stone Locks £25,000	1500	0	0
Interest on 50 per cent. to be then paid on private Stock £58,900	3534	0	0
The increase Revenue will meet the Amount.			
£	14034	0	0
In 1841, Interest on £223,900	14034	0	0
Advance on Locks £25,000	1500	0	0
The Toll will again meet this amount.			
£	15534	0	0
In 1842, Loan will amount to £248,9[illegible]. Interest	15534	0	0
This year the Toll will enable the Work to sustain itself without further advances and a gradual redemption may be expected as follows:			
In 1843, Loan continues at £258,900.			
Interest	15534	0	0
Toll amounting to	20000	0	0
Leaving an Increase of £	4466	0	0
In 1844, the Loan will be reduced to £224,434.			
Interest	14666	0	0
The amount of Toll	25000	0	0
Increase £	10334	0	0
In 1845, the Loan reduced to £*244,100			
Interest	14046	0	0
This year advanced half the Interest on Stock. Interest	1650	0	0
*£234,100 *27,504 £	15696	0	0
£261,604			
The Toll this year	13250	0	0
Increase £	15554	0	0
In 1846, the Loan reduced to £246,050.			
Interest	14763	0	0
The Toll this year	39063	0	0
Increase £	24300	0	0
In 1847, the Loan reduced to £221,750.			
Interest	13305	0	0
Toll this year	48827	0	0
Increase £	35522	0	0
In 1848, the Loan reduced to £186,228.			
Interest	11173	0	0
The Toll this year	61033	0	0
Increase £	49860	0	0

	£	s.	d.
In 1849, the Loan reduced to £136,338.			
Interest	8182	0	0
This year advance half Interest on Stock	1650	0	0
£27,504			
£	9832	0	0
£163,872			
The Toll this year	76291	0	0
Increase £	66459	0	0
In 1850, the Loan reduced to £97,413.			
Interest	5844	0	0
Toll this year	100000	0	0
Increase £	94156	0	0

Which liquidates the principal, and therefore will yield a Revenue to the Province of £125,000 per year to assist in other Improvements.

Appendix D.

St. Catharines, 1st September, 1842.

Sir,—I have the honor to acknowledge the receipt of your communication of the 30th ultimo, requesting my opinion, on the part of the Shareholders, as to the amount in Debentures, or money which they would demand in full acquittance of their claim and their interest in the Canal, in reply thereto, I beg to state that I have been instructed by the Shareholders to say, that they will accept of Debentures payable in London in twenty years, at an Interest of six per cent. for the amount of the Capital invested, and wait for the amount of Interest due thereon, until the Income from the Canal reaches £30,000 per year, when they will receive Debentures on the same terms; they also would prefer that the Revenues of the Canal should be first appropriated for the payment of those Debentures or the Interest thereon.

I have the honor to be, Sir,

Your obedient Servant,

(Signed,) WM. HAMILTON MERRITT.

R. W. Rawson, Esquire.

Appendix E.

Toronto, 22nd May, 1843.

Sir,—I have the honor to acknowledge the receipt of a Copy of a Memorandum or Minute of Council passed on Saturday last, in which I observe an omission of the former Shareholders, also the rate at which Debentures are to be issued in Canada.

I mentioned this both to the President of the Council and Mr. Secretary Harrison, who are of the opinion it will be of no consequence, as the intention of the Council is well understood.

I have therefore assured the Private Shareholders that if the proposition be acceded to by them the Debentures for the £117,800 may bear interest from the first January, 1823, (this should be 1843), and be issued by the Receiver General in the ordinary manner, six per cent. payable in Canada, and five per cent if payable in

England, which is at the option of the Shareholder, on returning the Debentures now issued.

I will take it for granted if no answer is returned by you that I have fairly represented the intention of the Council; if not, on placing this communication before them, you will have the goodness to apprise me, that I may give the Shareholders timely notice thereof.

I have the honor to be, Sir,
Your obedient Servant,
WM. HAMILTON MERRITT.

To Chief Clerk of the Executive Council.

Appendix F.

St. Catharines, 22nd September, 1843.

Sir,—I have the honor to present you with the enclosed Memorial from the Private Shareholders of the Welland Canal Company, which, I am happy to say, accedes to the terms proposed by His Excellency in Council, for his information.

I have the honor to be, Sir,
Your obedient Servant,
WM. HAMILTON MERRITT.

Honorable S. B. Harrison, &c., &c., &c.

To His Excellency Sir Charles Metcalfe, Governor General of British North America, &c., &c., &c.

May it please Your Excellency;

The undersigned Memorialists, Shareholders in the Welland Canal Company, beg leave to represent:

That since the control and management of that undertaking was assumed by the Legislature of Canada, under the Act of 1837, your Memorialists have confided wholly on the good faith of the Provincial Government.

They readily complied with the terms proposed under the Act of 1841, by transferring their Stock and placing the management of that Canal immediately under the Board of Works, which appeared to be the desire of the Government, and have at all times afforded every facility in their power to sustain the undertaking.

The Minute of Council of the 20th May last, proposing an amendment of the existing law, by issuing Debentures payable in England at five, or in Canada at six per cent. Interest, from the first of January, 1843, (in the usual manner), at the option of the holder, for amount of Capital held; and a further issue of Debentures for payment of Interest due since the same was paid in, as soon as the Tolls in any one year reach £45,000, has been submitted for their approval. Your Memorialists were led to believe from the terms of the Law of 1837, that an early remuneration was secured to them, as well as from the guarantee of the British Government in payment of the Provincial Debt in 1841—in which, from the interpretation placed on the first, and withholding the Royal Assent to the last, they have been disappointed. They also, from the favorable view taken of their claims by the Treasury and Colonial Minister in May, 1842, had indulged a hope they would be placed on a more favorable position; and they still feel that on a reconsiderstion of their present situation, if Your Excellency can consistently with the public interest

recommend the second issue of Debentures, as soon as contemplated by the existing Act, that it will be granted. If not, their confidence in the income from this Canal meeting their early anticipations, and that when realized full compensation will be made them, remains unimpaired.

Your Memorialists therefore adhering to the principle by which they have been governed, will accept of the terms offered in the Minute of Council alluded to. All of which is respectfully submitted.

HENRY YATES, and others.

ALBANY, July 22nd, 1843.

Appendix G.

DRAFT OF AN ACT IN MR. MERRITT'S HANDWRITING.

WHEREAS it appears conducive to the interests of the Private Shareholders in the Welland Canal Company, without proving injurious to the Public, that the 4th & 5th Vic. cap. 48, should be amended:

Be it therefore enacted, That it shall and may be lawful for Her Majesty's Receiver General, upon an Order to that effect from the Governor, Lieutenant Governor, or Person administering the Government of this Province, to receive from any individual possessing the same, all Debentures heretofore issued to the Private Shareholders in the Welland Canal Company under the Provisions of the above recited Act, and to cancel or destroy the same: Providing application be made within twelve months from the day of the date of this Act.

II. And be it enacted, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person administering the Government of this Province, to authorize the Receiver General to issue, for every One hundred pounds of Stock so returned, an equal amount of Debentures payable at six per centum per annum, payable half-yearly, in such sums or amounts as the party requiring the same may find most convenient; or for every Hundred pounds currency the sum of Ninety pounds sterling, payable at the Banking House of Glyn, Halifax & Co., in London, at five per cent. Interest, payable half-yearly.

III. Be it enacted, That if the Shareholders who have already transferred their Shares under the above recited Act, do not accept the Debentures hereby granted, it shall and may be lawful for the Receiver General of this Province to re-transfer the amount of Stock so held by each Individual, and place him in the same position in which he stood before the transfer of his Stock to the Government of this Province.

IV. Be it enacted, That the Governor General may authorize the Receiver General of this Province to issue the Debentures to which the Private Shareholders are hereafter to be entitled under the second Clause of 4th & 5th Vic. cap. 48, on the terms as heretofore described in the second Clause of this Act.

V. Be it enacted, That the Principal and Interest to be due and payable on account of the Debentures authorized by this Act shall be borne out and paid from the Tolls arising from the Welland Canal Company, and in default thereof out of the Public Revenues of this Province.

Appendix H.

(No. 148.)—9th July, 1842.

My Lord,—I have the honor to acknowledge the receipt of Your Lordship's Despatch of the 18th May last, No. 150, enclosing a correspondence between the Colonial Office and the Treasury on the one side, and Mr. Hamilton Merritt and Messrs. Bosanquet on the other, relative to the claim of the Shareholders in the Welland Canal Company, to be indemnified on account of the recent proceedings of the Legislature and Government in regard to that work. In this correspondence, the validity of the claim is unreservedly admitted by Her Majesty's Government, and I am directed to bring it under the notice of the Legislature with a view to its satisfaction.

On referring to the Memorial of the Stockholders, forwarded by the Messrs. Bosanquet, I find the grounds for compensation stated to be:—First, That "by "the Provincial Act of 1837, the Shareholders have been deprived of the manage- "ment of their property." Second, That "by the neglect of the Government to "execute whatever provisions of that Act were favorable to the Stockholders, they "have been deprived of Thirty-six per cent. on their subscriptions." Third, That "by the neglect of the Provincial Government to publish and carry into execution "the Provincial Act of 1839 before the Imperial Act of reunion was proclaimed, "the Stockholders have been deprived of that priority of claim which they would "otherwise have had upon the Consolidated Fund." And fourth, That "by the "late Provincial Act for the loan of £1,500,000, the principal and interest "of that loan is further interposed and preferred before the claim of the Stockhold- "ers. No specific pledge or appropriation of any funds is made for the payment of "the Debentures to be given, or of the interest thereon, only both are declared to "be chargeable upon and payable out of the Public Revenues of the Province. "The security will, of course, be almost worthless, and the Debentures quite un- "saleable in this Country."

The first observation which arises on this claim is that if it be founded on the assumption by the Government of the management of the Canal, it ought to have been brought forward at an earlier date. Between the passing of the Act 7 Will. IV. cap. 92, and the application of Mr. Hamilton Merritt to your Lordship, five years have elapsed, during which I am not aware that any steps have been taken by the Shareholders to obtain compensation for the alleged injury inflicted upon them. The Act of the last Session evidently gives them no claim which they did not possess before, inasmuch as their action under it is by the third clause made entirely optional.

But waiving this objection, there are other and more conclusive grounds on which, as it appears to me, the claims now put forward by the Shareholders must be rejected.

The Company, as your Lordship is aware, was originally incorporated by the Act 4 Geo. IV. cap. 17, for the making of a Boat Canal, at which time the amount necessary for that work was estimated by its projectors at £40,000. In 1825 the dimensions of the Canal were increased, so as to admit the passage of larger Vessels, and the Stock was raised to £200,000. In the following year, £25,000 was advanced by the Government to the Company, under a Bond for its repayment with interest at six per cent. In the same year an equal amount of £25,000 was voted by the Legislature of Lower Canada. In 1827 two Acts were passed, the first granting £16,360, which was estimated as one-ninth of the whole expense, for the free use of the Canal by the Government; the second taking Shares on the part of the Province to the amount of £50,000, under a Bond from the Company for £20,000 for the half yearly payment of the Interest at six per cent. In 1829, the Imperial Government advanced £50,000, taking as a securing for its repayment a

Mortgage upon the Canal itself, a condition which by the Provincial Statute, 10 Geo. 4, cap. 9, the Directors were enabled to carry into effect. In 1830 a further sum of £25,000 was advanced at six per cent., the Company giving a Bond for the payment of the Principal and Interest. In 1831 a further sum of £50,000 was advanced on the security of the Canal, and it was provided, that if the Company should fail to pay the Interest and Principal of this advance, the Receiver General should take possession of the Canal in the name of the Crown, "and appoint such "Agents, Collectors, and other Officers as may be requisite to manage the same, "and deposit and apply the proceeds thereof to the payment of the Interest and "Principal aforesaid." And rendered suspicious by the repeated demands upon them and by the constant falsification of all previous estimates, the Legislature further provided, "That no part of the said sum of £50,000 shall be advanced to "the said Company until personal security shall have been given to the satisfaction "of His Excellency the Lieutenant Governor, to the amount of £25,000, that the "said Canal shall be completed for ship navigation from the said River Welland to "some point in Lake Erie to be fixed upon by the Directors of the said Company "for a Harbour, and that the said Harbour shall likewise be completed without any "further grant for that purpose."

Notwithstanding this precaution, the Company, in 1833, again applied to the Legislature, when the sum of £7,500 was granted to them; and in 1834, a further of £50,000 was subscribed for as Public Stock. These sums, however, having proved inadequate, the Act 7 Will. 4, cap. 92, was passed for the "permanent "completion" of the Canal. By the preamble of this Act, it is recited that £107,500 had been subscribed as Public Stock, and £102,000 had been loaned to the Company under the provisions of several Acts. The Act then proceeds to provide that the £102,000 advanced by way of loan should be converted into Public Stock; that the Governor should be authorized to subscribe for £245,000 additional Stock; that the whole Capital Stock of the Company should be £597,300 in Shares of £12 10s. each, of which the Government of Upper Canada should hold 36,360, the Government of Lower Canada 2,000, and Private Stockholders 9424; that the management of the affairs of the Company should be entrusted to five Directors, of whom three should be appointed by the Crown and two by the Stockholders; and "That "the Tolls received upon the Canal, after deducting the amount required for the "charges now made thereon by law, or so much thereof as shall be necessary, shall "be first annually applied to discharge the Interest which will accrue upon the said "sum of £245,000 to be advanced for the purposes aforesaid, and the remainder of "the Income received by the said Company shall be divided among the Private "Stockholders, until it shall equal six per cent. on the amount of their Investments." In the last Session, the Act for the purchase of the Private Stock was passed, and in the Public Works Act, a vote of £450,000 was taken for the Canal.

The recapitulation of these proceedings shews two things which are very important. First, That the estimates prepared by the projectors of the Canal, and upon which the Legislature was called upon first to incorporate the Company, and afterwards to grant assistance from the public revenue, were, whether intentionally or not, most extravagantly incorrect. And secondly, That the Canal had, previously to 1837, been twice mortgaged to the Government, and that under the Act of the 1st Will. 4, cap. 18, it might, at any time, have been seized by the Receiver General, and the whole of the Officers appointed by him, without any further legislation on the subject.

But it, moreover, appears that of the whole amount of £491,777 expended upon the Canal, only £117,800, or less than one-fourth, has been subscribed by Private Individuals, while a further expenditure, nearly equal to all that has preceded, is still required, the whole of which is to be provided by the Province. Under such circumstances, can it be maintained, even putting the Government on an equality

with Private Stockholders, that they have secured to themselves an unfair share in the direction, or in so doing have inflicted on the Shareholders, an injury which would entitle them to compensation. Must it not rather be admitted, that they would have been grossly negligent of their duty as Trustees for the public if, when applied to for assistance, towards a work which had been so notoriously miscalculated and mismanaged, they had omitted to take the necessary precautions for securing the due administration, by responsible parties, of the Funds which they granted from the Public Purse. On this ground, at least, I cannot think that the Shareholders have any claim.

But they next complain that the 17th Clause of the Statute 7 Will. 4, c. 92, has been so interpreted as to withhold all benefit from them, and that there is now due to them, if that Clause were fairly construed, 36 per cent upon their Shares. The terms of this Clause I have already quoted, and your Lordship will observe that it provides that "the remainder of the income," after paying the legal charges and the government interest, shall be divided among the Stockholders until it shall equal six per cent, on their investments. It has been contended by Mr. Merritt on behalf of the Shareholders, that the word "income", means the gross receipts without deduction of the expenses of the Canal, and if this interpretation be correct, the Shareholders are no doubt entitled to the sum stated in their memorial. But it appears to me altogether extravagant and irrational to adopt such an interpretation. If the expenses of the management and repair of the Canal are not to be defrayed from its gross receipts, they must be defrayed from the Public Revenue, and thus the Canal would be kept up at the expense of the Province for the sole advantage of the private Shareholders, and the anomaly be presented of a concern actually incurring an annual loss and yet making an annual division of profits. Under such an arrangement the party who would suffer by the mismanagement which has taken place, would be, not those who entered upon the undertaking as a monetary speculation, but the Province which came in to assist them in their difficulties, and to rescue them from the embarrassment in which their own miscalculations had involved them. This appears to me altogether preposterous, and I cannot therefore admit that upon this ground the Shareholders have made out their claim to compensation.

In respect to the injury which they incurred by the delay in proclaiming the Act of 1839, and by the priority on the public Revenue of other claims before the Debentures to be issued for their Stock, it is only necessary to say a very few words. The security upon which the Shareholders advanced their money were the Tolls of the Canal. That security still remains to them, and it is at their option to retain it or to accept the Government Debentures in place of their Shares. It can scarcely be said, looking to the proceedings of the Company, that the security is now less than when they loaned their money, or that it has become less marketable by the transfer of the Work, from an irresponsible Direction by whom it had been almost ruined, to responsible and scientific Directors under whom it will be completed and perfected. I have myself no doubt that now that the Works are to be conducted under Government control, the Canal will soon become prosperous and thriving, but whether this be so or not, the Shareholders have no right to claim now at the expense of the public, a better security than they originally bargained for.

For these reasons I would submit to Your Lordship to reconsider the instructions which you have issued to me to bring this matter before the Legislature. Without at all undervaluing the importance of the Welland Canal, or depreciating the energy of Mr. Hamilton Merritt and others by whom it was originally commenced and has been carried on, I entertain very strong doubts whether the public would not have been much benefitted had the Company never been formed, or had it expired with its first failure. The Work would then have fallen into the hands

of the Government, and been conducted with regularity and science, and much of the expense which has been incurred would have been saved.

That the House of Assembly would take the same view with myself in regard to the present claim, I have not the least doubt, nor do I doubt that Mr. Hamilton Merritt is aware that it would do so. He knows that they would not listen to an individual Member who should bring forward such a demand, but he hopes that by the influence of the Government, it might be forced through the House. In this hope he would, I believe, be disappointed; and even if the claim had more foundation than it has, I think it would be extremely impolitic to bring forward a money question on which the Government would almost certainly be defeated. Among the Lower Canadian Members, who already complain of the unfair share of the debt of Upper Canada imposed upon them, it would meet with unqualified and probably angry opposition, while the Upper Canada Members who for years have been misled and wearied by the never ending miscalculations and demands of the Company, would to a great extent join with t em. The proposal would be rejected and the Government be left with the discredit of having been defeated on what would be described as a "job" for the benefit of parties residing in England.

Under these circumstances I would recommend that the Government should not in any way move in the matter. If there is any justice in the claims of the Shareholders, there is no doubt they will be brought forward with sufficient zeal by Mr. Merritt; if there is not, it is not fitting that the Government should be the means of pressing them on the Legislature.

I have, &c.

CHARLES BAGOT..

Appendix I.

MEMORANDUM or MINUTE of 20th May, 1843.

It is looked upon that the fixing the period at which Debentures shall be issued for the payment of the back Interest on the investment of the Private Stockholders, namely, when the tolls to be received at the Canal shall annually amount to £30,000, was intended to give the said back Interest when the tolls on the Canal shall be sufficient to pay the Interest on the sum expected to be expended in the construction of the work, the costs of management and repairs, the Interest on the Debentures issued for the principal sum invested by the Private Stockholders and the Interest on the Debentures for the back Interest.

The calculation appears not to be far wrong under the estimate of expenditure in the year 1839, but subsequently and before the passage of the late Act, a much larger expenditure was found to be necessary, and consequently if Debentures were to issue when the tolls on the Canal annually amounted to only £30,000, the Interest on the Debentures to be issued for the back Interest would be borne upon the Provincial revenue, contrary to the intention of the Legislature.

Mr. Merritt now proposes an alteration in the Law for the benefit of the Private Stockholders, which would make the £117,000 of Debentures which were intended as a repayment of the principal investment of the Private Stockholders payable in England, instead of in this Province, the rate of Interest payable in England to be 5 per cent. per annum.

To this proposal the Government do not think it just to the public interests to accede, unless upon the principle that the Interest on the Debentures for back Interest shall be no burden upon the public revenue. To enable them to be borne on the revenues of the Canal, it is now calculated will require an annual amount of

tolls of £45,000, Provincial currency, leaving the income from real estate and hydraulic privileges to meet the estimated cost of management and repairs after the completion of the Canal.

It is therefore not thought expedient to move in the amendment of the Law as proposed by Mr. Merritt, unless the issue of the Debentures for the payment of the back Interest shall be postponed until after the completion of the Canal, and until the tolls of one year shall amount to forty-five thousand pounds currency.

With respect to the claim of the Private Stockholders to receive dividends under the Act of one thousand eight hundred and thirty-seven, it is not considered that the Stockholders refusing to accept the present law are entitled to such dividend in any event until the tolls received upon the Canal, after deducting the amount required for the charges now made thereon by law, which charges are conceived to include the expense of management and repairs, are sufficient to discharge the amount of Interest on the sum borrowed under the Act; and moreover it seems doubtful (the sum of two hundred and forty-five thousand pounds contemplated to be borrowed under the Act not being raised, and the small portion which was raised not being applied to the construction of the Canal,) whether the contingency in which the Stockholders are to receive dividends can arise under the Act. If there be doubts on these subjects, they can be set at rest by a declaratory law.

If this proposition be acceded to by the Private Stockholders, the Debentures for the one hundred and seventeen thousand pounds, may bear Interest from the first January, one thousand eight hundred and forty-three.

Appendix J.

Mr. Durand from the Committee of the whole House, to consider the expediency of amending a certain Act of the Parliament of Upper Canada, passed in the seventh year of the Reign of His late Majesty, William IV., intituled, "An Act to "provide for the permanent completion of the Welland Canal, and for other pur- "poses therein mentioned;" and also a certain other Act of the Parliament of Upper Canada, passed in the fourth and fifth years of the Reign of Her present Majesty, intituled, "An Act to authorize the Stock held by Private Parties in the "Welland Canal, to be purchased on behalf of the Province;" reported, according to order, the Resolutions of the said Committee, which Resolutions were again read at the Clerk's table, and agreed to by the House, and are as followeth :—

Resolved, That it is expedient to repeal so much of an Act of the Parliament of Upper Canada, passed in the seventh year of the Reign of His late Majesty, William IV., intituled, "An Act to provide for the permanent completion of the "Welland Canal, and for other purposes therein mentioned," as provides for the income of the said Canal or any part thereof, being divided amongst the Private Stockholders.

Resolved, That it is expedient to repeal a certain Act of the Parliament of this Province, passed in the fourth and fifth years of the Reign of Her present Majesty, intituled, "An Act to authorize the Stock held by Private Parties, in the Welland "Canal, to be purchased on behalf of the Province," and to provide for the immediate issue of Debentures to the Private Shareholders, redeemable in twenty years from this date, and bearing Interest from the first day of January, 1843, which Interest may, at the option of the Shareholders, be payable in London, at the rate of five per cent. per annum; or in this Province at the rate of six per cent. per annum; and further to provide, that so soon after the completion of the Canal as the toll shall amount, in any one year, to £45,000 currency, other Debentures shall be

issued to the Private Stockholders, for the Interest on their Stock, for the time that the same had been paid in, such Debentures to be payable either in London, at the rate of five per cent. per annum, Interest, or in Canada, at six per cent., at the option of the Shareholders.

Ordered, That the Honorable Mr. Hincks have leave to bring in a Bill to repeal a certain Act therein mentioned, and to make further provision for enabling the Provincial Government to purchase the Stock held by Private Parties in the Welland Canal.

He accordingly presented the said Bill to the House, and the same was received and read for the first time; and ordered to be read a second time on Thursday next.

Appendix K.

4° & 5° VICTORIÆ, CAP. XLVIII.

An Act to authorize the Stock held by Private Parties in the Welland Canal to be purchased on behalf of the Province.

[18th September, 1841.]

WHEREAS it is desirable to place the Welland Canal under the exclusive control of the Government of this Province, and for that purpose to provide for the purchase from the Private Stockholders in that work, of the Stock by them held, and which amounts to the sum of One Hundred and Seventeen Thousand Eight Hundred Pounds: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, "An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada," and it is hereby enacted by the authority of the same, That from and after the passing of this Act, it shall and may be lawful for Her Majesty's Receiver General, upon an order to that effect from the Governor, Lieutenant Governor or person administering the Government of this Province, to issue such number of Debentures as may be required, to the several Stockholders in the Welland Canal, for a sum equal to the amount of Stock held by him or them; and such Debentures shall be made redeemable in twenty years from their date, and shall bear an interest of two per cent. per annum on the amount for which they may be issued for the first two years, three per cent. for the third year, four per cent. for the fourth year, five per cent. for the fifth year, and six per cent. for the sixth and following years; which interest, as well as the principal sum, shall be chargeable upon and payable out of the Public Revenue of this Province.

II. And be it enacted, That whenever the Tolls collected on the said Canal shall annually amount to the sum of Thirty Thousand Pounds, it shall be lawful for the Governor, Lieutenant Governor or person administering the Government, to authorize and direct the Receiver General of the Province to issue other Debentures to the original Stockholders or their legal representatives, for such sums as will make up six per centum Interest upon the amount of Stock by them subscribed and paid for, from the time the same shall have been actually paid in, which Debentures shall be made payable in twenty years from the date thereof, and bear Interest at the rate of six per centum, payable half yearly out of the Public Revenues of the Province.

III. Provided always, and be it enacted, That nothing herein contained shall be construed to compel any Stockholder to accept Debentures for the Stock by him

held as aforesaid, or, in case of refusal to take the same, to deprive him from being paid from the tolls and revenues of the said Canal, according to the laws now existing, having relation to the said Canal.

IV. And be it enacted, That so soon as the Stockholders, owning two thirds of the Stock in the said Canal, shall have signified their acceptance of Debentures in lieu of Stock, as hereinafter provided, so much of the eighth section of an Act passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, "An Act for the permanent completion of the Welland Canal, and for other purposes therein mentioned," as authorizes the Annual Election of two Directors by the private Stockholders of the said Welland Canal Company, or requires the election or appointment of more than three Directors for the management of the stock, property, affairs and concerns of the said Welland Canal Company, shall be and so much of the said section is hereby repealed; and a majority of the other three Directors shall be a quorum for the transaction of business: Provided always, that the Governor, Lieutenant Governor, or person administering the Government, shall have power and authority to appoint such three Directors, or any of them, annually, at his discretion.

Appendix L.

7 VICTORIÆ CAP. XXXIV.

An Act to repeal a certain Act therein mentioned, and to make further provision for enabling the Provincial Government to purchase the Stock held by private parties in the Welland Canal.

[9th December, 1843.]

WHEREAS in and by a certain Act of the Parliament of this Province, passed in the fourth and fifth years of the Reign of Her present Majesty, intituled, "An Act to authorize the Stock held by private parties in the Welland Canal to be "purchased on behalf of the Province," after reciting that it was desirable to place the Welland Canal under the exclusive control of the Government of this Province, and for that purpose to provide for the purchase from the Private Stockholders in that work of the Stock by them held, and which amounted to the sum of One hundred and seventeen thousand eight hundred pounds, it was, amongst other things, enacted, that it should and ought to be lawful for Her Majesty's Receiver General, upon an order to that effect from the Governor, Lieutenant Governor, or person administering the Government of this Province, to issue such number of Debentures as might be required to the several Stockholders in the Welland Canal, for a sum equal to the amount of Stock held by him or them, and that such Debentures should be made redeemable in twenty years from their date, and should bear an Interest of two per cent. per annum on the amount for which they might be issued, for the first two years, three per cent. for the third year, four per cent. for the fourth year, five per cent. for the fifth year, and six per cent. for the sixth and following years, which interest and principal sum should be chargeable on and payable out of the public revenues of the Province, and that whenever the tolls collected on the said Canal should annually amount to the sum of Thirty Thousand Pounds, it should be lawful for the Governor, Lieutenant Governor, or person administering the Government to authorize and direct the Receiver General of this Province to issue other Debentures to the original Stockholders, or their legal representatives, for such sums as would make up six per centum interest upon the amount of stock by them subscribed and paid for, from the time the same should have been actually

paid, which Debentures were to be made payable in twenty years from the date thereof, and were to bear interest at the rate of six per centum per annum, payable half yearly out of the public revenues of this Province, and that nothing in the said Act contained should be construed to compel any Stockholder to accept Debentures for the Stock held by him as aforesaid, or, in case of refusal to receive the same, to deprive him from being paid from the tolls and revenues of the Canal, according to the laws then existing having relation to the said Canal; And whereas by a certain Act of the Parliament of Upper Canada, passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, "An Act "to provide for the permanent completion of the Welland Canal, and for other "purposes therein mentioned," provision is made for raising, by way of public loan, the sum of Two hundred and forty-five thousand pounds for the purposes of the said Act, and that the tolls received upon the said Canal, after deducting the amount required for the charges then made thereon by law, or so much thereof as might be necessary, should in the first place be applied to discharge the Interest which should accrue upon the said sum of Two hundred and forty-five thousand pounds, and that the remainder of the Income received by the said Company should be divided among the Private Stockholders until it should equal six per cent. on the amount of their investments; And whereas by reason of difficulties arising from the state of the Provincial Finances of Upper Canada aforesaid, a small part only of the said sum of Two hundred and forty-five thousand pounds, was actually raised, and the Canal was therefore not completed by means of the said loan; And whereas the said Canal is in progress of completion by means of other and larger sums of money received for that purpose than the sum provided to be raised under the said Act; And whereas therefore, the circumstances contemplated by the said Act, under which the said Private Stockholders were to have received dividends from the Income of the said Canal, have not arisen and cannot now arise, and it is therefore expedient to repeal the said provision for the payment of such dividends; And whereas it is represented to be for the interest of the Private Stockholders aforesaid that the said first in part recited Act should be repealed, and other provisions enacted in lieu thereof: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, "An Act to re-unite "the Provinces of Upper and Lower Canada, and for the Government of Canada," and it is hereby enacted by the authority of the same, That the said first in part recited Act, and the said Act of the Parliament of Upper Canada, in so far as the same relates to the division of the Income of the said Canal, or any part thereof, amongst the Private Stockholders, shall be and the same are hereby repealed, except in so far as the same repeal any former Act or Acts of the Parliament of Upper Canada or of this Province.

II. And be it enacted, That there shall be charged upon the Consolidated Revenue Fund of this Province, for the benefit of the private Stockholders in the said Welland Canal, the sum of One Hundred and Seventeen Thousand Eight Hundred Pounds, currency of this Province, with interest thereon, from the first day of January, in the year of our Lord one thousand eight hundred and forty-three.

III. And be it enacted, That it shall and may be lawful for the Governor of this Province in Council, to direct the Receiver General of this Province to issue such number of Debentures as may be required, to the private Stockholders in the Welland Canal Company, not exceeding the said sum of One Hundred and Seventeen Thousand Eight Hundred Pounds, currency, at a rate of interest not exceeding five per cent. per annum, if the said Debentures and Interest shall be payable in England, or not exceeding six per centum per annum, if the said Debentures and In-

terest shall be made payable in Canada; and that the Debentures or other Securities to be issued shall bear date the first day of January, in the year of our Lord one thousand eight hundred and forty-three, and the interest thereon shall be payable from thence on the first day of January next succeeding the issue thereof, and from thence half-yearly on the first day of July and the first day of January, in each year, until the principal sum shall be paid, and such principal sum shall be made payable in twenty years from the date of the said Debentures.

IV. And be it enacted, That it shall and may be lawful for the Governor of this Province in Council, to direct the issue of the said Debentures to the private Stockholders according to their respective claims, and such Debentures shall bear the rates of interest above mentioned, and shall be payable either in London or in this Province, as such private Stockholders shall respectively desire, and at such place therein as the Governor in Council shall direct and appoint: Provided always, that nothing in this Act contained shall be held to invalidate or make void any Debentures heretofore issued under the said first in part recited Act.

V. And be it enacted, That it shall and may be lawful for the Governor of this Province in Council to direct the substitution of the Debentures to be issued under this Act, in lieu of the said Debentures already issued, upon application of the party holding the same.

VI. And be it enacted, That so soon after the completion of the said Canal as the tolls received thereon for any one year shall amount to the sum of Forty-five Thousand Pounds, currency of this Province, there shall be charged upon the Consolidated Revenue Fund thereof an amount equal to six per centum per annum on the private stock subscribed from the time the same has been paid in, for the benefit of the private Stockholders aforesaid, or their legal representatives.

VII. And be it enacted, That it shall be lawful for the Governor of this Province in Council, at any time after such receipt of tolls, to direct to be issued to such private Stockholders, or their legal representatives, Debentures for the amount of their respective claims, bearing interest and payable in the same length of time after their issue, and at the same places, respectively, as if the same were issued under the foregoing provisions of this Act to the private Stockholders aforesaid for the principal sum invested by them.

VIII. And be it enacted, That in case any certificate or certificates, or other documents, have been issued to any of the said private Stockholders, or their legal representatives or assigns, signifying that they or any of them are or shall be entitled to receive the back interest mentioned in the said first in part recited Act, or Debentures therefor, those who shall lawfully hold such certificate or other document, shall be entitled to the same payments or Debentures, and to none other than they would be entitled to under this Act if such certificates or other documents had never issued.

No. 16.

SECRETARY'S OFFICE, June 13, 1853.

Sir,—I have the honor, by command of the Governor General, to acquaint you, for the information of the par.. s interested, that His Excellency has had under his consideration in Council the several renewed applications recently made by you on behalf of the Private Shareholders in the late Welland Canal Company, urging the right of such Shareholders to claim six per cent. per annum upon the amount of their paid up Stock, from the time the same was paid in until the year 1852, when the Tolls of the Canal reached the sum of £45,000, and submitting certain legal

opinions from several eminent Lawyers, &c., in England and the United States, in support of those pretensions.

His Excellency has also had under his consideration, in connection with the above, a printed Memorandum submitted by the Honorable Attorney General for Upper Canada, containing a full detail of the facts connected with this claim, and of the reasons which operate against its being favorably entertained; and, in view of all the facts, His Excellency must adhere to the decision previously arrived at upon the matter, viz.: that the claim in question cannot be entertained.

His Excellency has, moreover, considered your request, made subsequently to the preparation of the Memorandum in question, that the rights of the Stockholders may be considered in relation to the Statute, and not with reference to the equitable grounds set forth in your former Memorial upon the subject, and that (in the event of the Executive being of opinion that the Stockholders are not entitled to the amount claimed) the question may be referred for decision to some legal tribunal either in this Country or in England.

In reference to this request, I am directed by His Excellency to state, that the reasons given in the Memorandum appear to apply to the legal as well as to the equitable view of the subject, and that there does not seem to be anything in the nature of the claim (which neither on legal or equitable grounds can be admitted) to justify His Excellency in referring the question to a legal tribunal, as doing so would be a departure from the ordinary rules prescribed by the Government when demands of a like nature are presented.

I have, &c.,

A. N. MORIN.

The Honorable Wm. H. Merritt, M.P.

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